TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 132.

COMMERCIAL PUBLISHING COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL C. BECKWITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 12, 1902.

(16,282.)

(18,222.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 369.

COMMERCIAL PUBLISHING COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL C. BECKWITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a Court of Appeals, State of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff and Respondent,
vs.
SAMUEL C. BECKWITH, Defendant and Appellant.

Case and Exceptions.

Porter & Kilvert, attorneys for defendant and appellant, 154 Nassau street, New York city.

Otis & Pressinger, attorneys for plaintiff and respondent, 111 Broadway, New York city.

A copy of within paper this day received, Aug. 11 1899 Otis & Pressinger, 111 Broadway, N. Y.

1 Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant.

Statement Required by Rule 41.

The summons herein was served on defendant on February 26, 1896.

The complaint was served March 23, 1896.

The amended answer of the defendant was served on April 14, 1896.

The supplemental answer of defendant was served January 5, 1897.

Otis & Pressinger originally appeared and have since continued as attorneys for the plaintiff.

Porter & Kilvert originally appeared and have since continued as attorneys for the defendant.

2 Supreme Court of the State of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
against
SAMUEL C. BECKWITH, Defendant.

Plaintiff Desires Trial within the City and County of New York.
Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, February 28th, 1896.

OTIS & PRESSINGER,
Plaintiff's Attorneys.

Post-office address and office, No. 111 Broadway, New York.

1—369

3 New York Supreme Court, City and County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant.

The plaintiff, by Otis & Pressinger, its attorneys, bring this action against the defendant, and for cause of action alleges on information and belief:

I.

That the plaintiff is a foreign corporation duly organized under the laws of the State of Tennessee, and engaged in the publication of a newspaper known as the Commercial Appeal, at Memphis in said State.

II.

That prior to the 30th day of September, 1893, the Memphis Appeal Company, a corporation organized under the laws of the State of Tennessee was engaged in the publication at said city of Memphis of a newspaper known as the Memphis Appeal-Avalanche.

That on or about the date aforesaid one Andrew D. Gwynne and others began an action in the chancery court of Shelby county, Tennessee, against said The Memphis Appeal Company, together with the defendant herein, and others, the object of said action being to enforce a trust deed for the benefit of creditors made by said Memphis Appeal Company. That on the 30th day of September,
4 1893, a decree was duly entered in said action appointing one William J. Chase, receiver of the property and assets of said Memphis Appeal Company, and instructing him to continue the publication of said Memphis Appeal-Avalanche, under the direction of the court. That thereafter said receiver, pursuant to said decree, continued the publication of said newspaper from the 30th day of September, 1893, to the 16th day of June, 1894, and during said period of time published advertisements at the special instance and request of the various parties mentioned in Schedule A hereto annexed, of the reasonable value of the various amounts set opposite their respective names and amounting in the aggregate to $5,796.32, which various sums of money said parties then and there promised and agreed to pay to said receiver.

III.

That on or about the 5th day of October, 1893, a portion of the controversey embraced in said action of Andrew D. Gwynne *et al. vs.* Memphis Appeal Company *et al.*, to wit: the controversey between the plaintiffs therein and said Samuel C. Beckwith was removed into the circuit court of the United States of the western division of the western district of Tennessee, by said Samuel C. Beckwith pursuant to the provisions of the statutes of the United States in such case made and provided, and thereafter said portion of said controversey was pending in the court last aforesaid.

IV.

That thereafter two other actions were brought in said chancery court of Shelby county, Tennessee, against said Memphis Appeal Company and others, one by J. B. Myrick *et al.* the other by Jacob Fink *et al.* That thereafter said three actions so pending in said chancery court of Shelby county were consolidated into one action.

5 V.

That thereafter and during the month of April, 1894, decrees were simultaneously entered in all of said actions thus pending in the chancery court of Shelby county and the circuit court of the United States appointing J. B. Clough and E. B. McHenry commissioners to sell all the property of every kind and description of said Memphis Appeal Company thus vested in said receiver, also all moneys which were then due or should thereafter become due to said receiver by reason of the operation of said newspaper in his hands as aforesaid, which included the moneys set forth in said Schedule A.

VI.

That thereafter and on the 16th day of June, 1894, said property, together with the accounts due said receiver, as aforesaid, *were* sold by said commissioners at public auction, in the city of Memphis, pursuant to said decree of sale; when and where said property was struck off to one West J. Crawford, he being the highest, best and last bidder therefor. That at the time of said sale the amounts mentioned in Schedule A above referred to, were due from the various parties therein mentioned to said receiver. That on the 3d day of July, 1894, decrees were simultaneously entered in said actions thus pending in the said chancery court of Shelby county, Tennessee, and said circuit court of the United States confirming said sale.

VII.

That at the time of the making of said various decrees, said chancery court of Shelby county and said circuit court of the United States had jurisdiction of the subject-matter of said various actions and of the parties thereto.

6 VIII.

That on or about the 9th day of July, 1894, said West J. Crawford duly assigned and transferred to the plaintiff, all and singular, the claims, demands and rights of action to which he acquired title by the sale above referred to and which included the claims set forth in said Schedule A.

IX.

That the defendant has collected from the various parties mentioned in said Schedule A, a portion of the sums due from them respectively as therein shown, amounting in the aggregate to the sum of $3,902.74, as set forth in Schedule B, hereto annexed, and at the dates therein specified.

X.

That the moneys so collected by defendant were received by him without authority and same were the property of plaintiff or his predecessors in title. That plaintiff, subsequent to the 25th day of February, 1896, and prior to the commencement of this action, demanded from the defendant the moneys so collected, but defendant has failed, omitted and refused to pay over said moneys to plaintiff or any part thereof.

Wherefore plaintiff demands judgment against the defendant for the sum of three thousand nine hundred and two and $\frac{74}{100}$ dollars, with interest thereon from the 1st day of January, 1894, together with the costs of this action.

OTIS & PRESSINGER,
Plaintiff's Attorneys, 111 *Broadway, New York.*

7 CITY AND COUNTY OF NEW YORK, *ss:*

A. Walker Otis, being sworn, says that he is one of the attorneys for the plaintiff herein. That he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to such matters as are therein stated to be alleged on information and belief, and as to such matters he believes it to be true.

That the reason why this verification is not made by plaintiff is because it is foreign corporation.

That the grounds of deponent's belief as to all matters not stated on his own knowledge consist of written and oral statements made to him by the various officers and agents of the plaintiff and by an examination of copies of the record of the court proceedings referred to in the complaint.

A. WALKER OTIS.

Sworn to before me this 23d day of March, 1896.
J. EDWARDS WYCKOFF,
Notary Public, N. Y. Co.

8 EXHIBIT A.

Bates & Morse, New York	$1,572 47
C. I. Hood & Co., Lowell, Mass	583 35
Lord & Thomas, Chicago, Ill	515 72
Swift & Bradfield	350 00
World's Dispensary Medical Ass'n, Buffalo, N. Y	337 98
Golden Gate Adv't'g Co., San Francisco, Cal	306 00
Geo. P. Rowell & Co., N. Y	205 20
Dauchy & Co	196 59
C. N. Erickson	194 20
Anglo-American Drug Co	175 00
U. S. Chemical Co	145 80
Enoch Morgan's Sons, N. Y	115 41
George S. Parvin, Cincinnati, Ohio	109 02

G. E. Gurrier	106 30
Pond's Extract Co	100 00
Journal Adv't'g Agency, N. Y	83 33
Miles Medical Co	75 00
E. M. Hoops, Wilmington, Del	74 15
Alden & Faxen	73 64
Pond Lily Co	70 29
J. W. Wupperman	68 33
J. Lowenherz, New York	63 00
Radway & Co., 32 Warren St., N. Y	62 50
The Edwin Alden Co., Cincinnati, Ohio	35 27
Stanley Day	29 37
S. R. Niles	26 60
R. Gunther & Co., Chicago, Ill	20 03
The Jno. F. Phillips Adv't'g Co., New York	17 07
Cleveland Baking Powder Company	16 67
N. E. Medical Institute	15 64
Geo. H. Reager, Philadelphia, Pa	15 00
J. H. Pozzoni	11 36
G. W. Place & Co	9 46
Andrew Rotto	4 80
Fletcher Newspaper Adv't'g Ag'cy, Cleveland, Ohio	2 93
W. N. Gates & Co	2 76
Wm. A. Sherman, Providence, R. I	2 70
9 American Advertising Agency, Temple court, N. Y	1 80
E. C. Doke	68
T. C. Evans, Boston, Mass	30
Isabella Toilet Company	30
Cranston & Co	30
	$5,796 32

EXHIBIT B.

1894.	
Oct. 9, Bates & Morse	$844 35
1895.	
Jan. 5, Hood & Company	562 50
1894.	
Aug. 4, Oct. 11, Lord & Thomas	56 66
Jan. 15, Sept. 29, Swift & Bradfield	350 00
Dec. 24, World's Dispensary	283 25
Aug. 21, Golden Gate Advertising Company	288 07
Ap'l 14, Geo. P. Rowell & Company	201 76
May 4, Dauchy & Company	55 22
July 30, E. N. Erickson	175 00
Jan. 17, July 17, Anglo-American Drug Company	162 50
Ap'l 28, July 17, Enoch Morgan's Sons Company	106 25
Jan. 22, Ap'l 21, George S. Parvin	87 59
Jan. 25, 11, George E. Gurrier	106 30
M'ch 14, Pond's Extract Company	100 00

July 30, Aug. 10, Journal Advertising Company	66	66
Feb. 5, Miles Medical Agency	75	00
M'ch 6, July 25, E. M. Hoopes	69	76
May 26, Oct. 17, Alden & Faxen	26	78
Ap'l 3, Dec. 4, J. W. Wuppermann	50	00
Feb. 14, Ap'l 5, Joseph Lowenherz	53	90
June 26, Radway & Company	62	50
Dec. 2, Stanley Day	29	38
M'ch 20, S. R. Niles	18	92
July 30, Cleveland Baking Powder Company	16	67
10 Oct. 9, New England Medical Institute	15	64
May 12, George H. Reager Advertising Agency	15	00
Feb. 15, J. A. Pozzoni	11	36
Jan. 6, George W. Place	9	46
Nov. 16, W. N. Gates & Company		68
1893.		
Oct. 2, E. C. Dake		68
1894.		
June 9, T. C. Evans		30
July 1, Isabella Toilet Company		30
Jan. 7, Cranston & Company		30
	$3,902	74

New York Supreme Court, City and County of New York.

COMMERCIAL PUBLISHING COMPANY
against
SAMUEL C. BECKWITH.

Samuel C. Beckwith the defendant in this action for an amended anwer to the complaint therein represents and alleges as follows:

I.

He has not knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraph of said complaint designated "I."

II.

He has not knowledge or information sufficient to form a belief as to any of the allegations contained in that paragraph of said complaint designated "II" except as to the allegation therein that prior to September 30th, 1893, the Memphis Appeal Company was
11 a corporation under the laws of Tennessee, and engaged in publishing a newspaper at Memphis known as the Memphis Appeal-Avalanche, which allegation the defendant admits to be true.

III.

He has not knowledge or information sufficient to form a belief as to any of the allegations contained in those and each of those

paragraphs of said complaint which are designated III, IV, V, VI, VII and VIII.

IV.

In answer to the allegations contained in that paragraph of said complaint designated IX, he admits that he has collected the sum of $3,902.74 from the various persons therein referred to, and denies that the plaintiff or any other person other than the defendant has or ever had any right, claim or title to said moneys or any thereof.

V.

He denies the allegations in that paragraph of said complaint designated X, that the moneys alleged to have been collected by the defendant as set forth in said complaint, were collected and received by him without authority, and that the same were the property of the plaintiff or his predecessors in alleged title thereto, and admits the allegation in said paragraph that plaintiff has demanded of him the said monies and that he has refused to pay over the same on said demand.

VI.

For a further amended answer to said complaint and as a defense in this action the defendant alleges, that prior to the 30th day of September, 1893, the Memphis Appeal Company mentioned in said complaint entered into a contract or agreement with this defendant for the publication of certain matter in the said newspaper the Memphis Appeal-Avalanche referred to in said complaint, and
12 that under the terms and conditions of said agreement, the said company had been prior to and was at the time of the alleged appointment of the receiver Chase, publishing such matter in said newspaper under said agreement and continued so to do after said appointment, and that the said agreement was in force and being carried out at all of said times, and is still in full force and has never been cancelled or terminated by said parties or by any other means or proceedings whatsoever, and that the money alleged in said complaint to have been collected and received by said defendant was collected and received by him under and pursuant to the terms and conditions of said agreement on account of such publications, and in no other way, and that neither the said alleged receiver, or said plaintiff or his alleged predecessors in title ever had any right or title to said money or any part thereof, and that the same and all thereof were collected and received by defendant rightfully and under the authority of and pursuant to said agreement, and defendant alleges that the said alleged receiver Chase, never acquired any right or title to said publications being made, or which were made under said agreement, or to the monies charged therefor by said newspaper, and that said alleged receiver never conveyed or sold any right or title thereto to the said Crawford, or to any other person or company, except it may be in form merely, and that plaintiff has not, nor has he ever had any right or title to said money or to any part thereof, and that the same and

all thereof was and is the sole property of the said defendant, under and by virtue of, and in pursuance of the terms and conditions of the contract and agreement aforesaid.

Wherefore defendant asks that said complaint be dismissed with costs.

PORTER & KILVERT,
Defendant's Attorneys.

Office and post-office address, No. 154 Nassau street, New York city.

13 CITY AND COUNTY OF NEW YORK, *ss:*

Samuel C. Beckwith, being duly sworn, deposes and says, that he is the defendant in this action, and that he has read the foregoing amended answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

S. C. BECKWITH.

Sworn to before me this 14th day of April, 1896.
WM. D. NEILLEY,
Notary Public, N. Y. Co.

New York Supreme Court.

COMMERCIAL PUBLISHING COMPANY
vs.
SAMUEL C. BECKWITH.
} Supplemental Answer.

The defendant, Samuel C. Beckwith, by way of a supplement to his amended answer to the complaint in this action, and in addition to said amended answer reaffirming and repeating all the allegations, answers and defenses contained in his said amended answer to said complaint, and hereby making the same a part of the supplemental answer respectfully alleges and represents upon information and belief:

I.

14 That on or about the 21st day of September, 1893, the Memphis Appeal Company mentioned in said complaint executed and delivered to Andrew D. Gwynne and Robert J. Morgan as trustees, a certain so-called deed of trust, dated said day in and by which said company purported and attempted to convey to said Gwynne & Morgan as such trustees, certain of the property of said company, and that said Gwynne and Morgan took, accordingly, possession of said property under such deed, and thereafter commenced an action in the chancery court of Shelby county, State of Tennessee against The Memphis Appeal Company, Samuel C. Beckwith, the defendant in this action and others, as defendants, the bill of complaint in which action was filed in the clerk's office of said court at Memphis in said Shelby county on the 30th day of Septem-

ber, 1893, and said action was based upon said deed of trust, and had for its object, among other objects, the alleged protection and use of the property mentioned and referred to in said deed.

II.

That such proceedings were had in said suit that one William J. Chase, a resident of Memphis aforesaid, was on the said 30th day of September appointed by the said court as a receiver therein of the said property covered by and involved in said deed, and that he thereupon qualified and entered into the performance of his duty as such receiver, and thereafter and in such capacity attempted and purported to sell the claim set up in the complaint in this action as a cause of action against this defendant, and in so doing executed and delivered to one West J. Crawford as an alleged purchaser thereof from him as such receiver, a purported assignment of the same and that thereafter the said Crawford attempted and purported to assign his interest in said claim to the plaintiff in this action, and that the said claim now constitutes the cause of complaint in this action.

15

III.

That thereafter and on or about the 8th day of July, 1896, such proceedings were further had in said action on appeal therein entered on March 26th, 1896, to the supreme court of the State of Tennessee, a court of competent appellate jurisdiction, that the said deed of trust and all proceedings had in the said chancery court based thereon in said suit of Gwynne & Morgan against Memphis Appeal Company, Samuel C. Beckwith *et al.*, inclusive of the said appointment of said receivers was decreed and adjudged by said supreme court to be invalid and void—and that judgment was duly and accordingly entered in said supreme court on said 8th day of July, 1896, in Minute Book, 96, p. 334, &c., and that such action and judgment of the supreme court was thereafter duly made the judgment and decree of the said chancery court.

IV.

That by reason of the said action by the said supreme court the alleged title in said Gwynne & Morgan under said trust deed and in said receiver appointed as aforesaid, and in said Crawford as said alleged purchaser, and in said plaintiff as the alleged purchaser from said Crawford, failed and never vested in them or any of them, either in fact, law or equity, and that by reason of the same and all thereof the said alleged title to said cause of action in said plaintiffs have failed and that he has no right, title or interest therein and no cause of action thereon in this suit against said defendant therein, and that the said adjudication and judgment of said supreme court, and as so made the judgment of the said chancery court thereupon became and now constitutes a bar to the prosecution of this action against the defendant by plaintiff therein.

16 Wherefore defendant asks that the complaint in this action be dismissed as in said amended answer prayed, and that he have his costs and disbursements of this action.

PORTER & KILVERT,
Defendant's Attorneys.

Office and post-office address, number 154 Nassau street, New York city.

CITY AND COUNTY OF NEW YORK, *ss:*

Thomas Kilvert, being duly sworn, deposes and says that he is one of the attorneys for the defendant in this action; that he has read the foregoing supplemental answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason why the verification of said supplemental answer is made by deponent, and not by defendant, is that defendant is now absent from the county of New York, that being the county in which said defendant and his said attorneys respectively reside. Deponent further says that the grounds of his belief as to all matters not in said supplemental answer stated upon his own knowledge *is* derived from conversations had with defendant and from papers and documents in the possession of said attorneys relating to the subject-matter of the foregoing supplemental answer.

THOS. KILVERT.

Sworn to before me this 5th day of January, 1897.
FREDERICK C. ANDERSON,
Notary Public, N. Y. Co.

17 Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant.
} Judgment, March 24, 1899.

This action having been called for trial in its regular order on the calendar of this court at a trial term (part VII) thereof held at the county court-house in the county of New York on the 21st day of March, 1899, before the Hon. Henry Bischoff, Jr., and a jury, the plaintiff appearing thereat by Otis & Pressinger, its attorneys, and the defendant appearing thereat by Porter & Kilvert, Esqs., his attorneys, and the jury under the direction of the court having rendered a verdict in favor of the plaintiff and against the defendant for the sum of four thousand nine hundred and sixty-seven $\frac{31}{100}$ dollars, and the plaintiff's costs having been duly taxed on notice at the sum of six hundred and ninety-seven and $\frac{62}{100}$ dollars, now on motion of Otis & Pressinger, the attorneys for the plaintiff, it is

Adjudged that the plaintiff Commercial Publishing Company recover of defendant Samuel C. Beckwith the sum of four thou-

sand nine hundred and sixty-seven $\frac{32}{100}$ dollars, the amount found by the jury as aforesaid, together with the further sum of six hundred and ninety-seven and $\frac{82}{100}$ dollars, plaintiff's costs as aforesaid, amounting in all to the sum of five thousand six hundred
18 and sixty-five and $\frac{14}{100}$ dollars and that the plaintiff have execution therefor.

[L. S.] WM. SOHMER, *Clerk*.

Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant.

Case and Exceptions.

This action came on for trial before the Hon. Henry Bischoff, Jr., and a jury, at trial term (part VII) of this court on March 21, 1899.

Appearances.—For plaintiff, A. Walker Otis, Esq., of Otis & Pressinger. For defendant, Porter & Kilvert.

Mr. Otis opens the case on behalf of the plaintiff and offers in evidence the following agreed statement of facts:

Same received in evidence and marked Plaintiff's Exhibit I.

19 New York Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant.

For the purposes of this action and in order to facilitate the trial thereof, the parties hereby agree that the following are the facts in this case, and the same may be read in evidence by either party upon the trial:

1. That the plaintiff is a foreign corporation, duly organized under the laws of the State of Tennessee, and engaged in the publication at Memphis in said State, of a newspaper known as the Commercial Appeal.

2. Prior to the 30th day of September, 1893, the Memphis Appeal Company, a corporation organized under the laws of the State of Tennessee, was engaged in the publication at said city of Memphis of a newspaper known as the Memphis Appeal-Avalanche.

Prior to the 30th day of September, 1893, the defendant had entered into a contract with said Memphis Appeal Company, which contract is contained in two letters dated January 3, 1891, of which the following are copies:

20 MEMPHIS, TENN., *Jan.* 3*d*, 1891.

S. C. Beckwith, 48 Tribune bldg., New York city.

DEAR SIR: In consideration of special efforts which you pledge yourself to make in our behalf to the best of your efforts and ability,

and furthermore, in consideration of allowing you nothing in the shape of salary, office rents or traveling expenses, we hereby authorize and appoint you our sole and exclusive agent for a term of five years from September 1st, 1891, and sooner if possible, on a plain commission basis of twenty-five per cent. on all business for all that portion of the United States, north of a line running east and west with the southerly boundary of Ohio, Missouri, embracing Cincinnati and St. Louis, including these two points.

All applications for rates, space, etc., from aforesaid territory to be referred to you, and in case we should make a deal direct with any parties, agent or advertisers, from your territory (which, however, is not contemplated), we will allow you the commission named upon same, and refer it to you for collection.

You are to collect all bills and render monthly statements, and to be held responsible for all accounts, except where a concern should fail through no fault of yours, and, in event of that, you are simply to lose your commission, but not to be liable beyond that.

You are not to represent any other morning paper in the State of Tennessee or Arkansas without our consent in writing, but to do all you can in every way, and at all times, within the above territory, to advance the interests of the Appeal-Avalanche.

MEMPHIS APPEAL-AVALANCHE COMPANY.
T. B. HATCHETT, *Bus. Manager.*

Accepted.
S. C. BECKWITH.

21 MEMPHIS, TENN., *Jan. 3rd*, 1891.

The Memphis Appeal Company, Memphis, Tenn.

GENTLEMEN: In consideration of a contract this day entered into by and between us, I hereby agree to advance to you thirty thousand dollars ($30,000.00), as follows:

$5,000 in cash on or before January 7th, $5,000 on or before the 12 of January 1891, then $5,000 on the 26th of January, 1891, to take up your note now in the Nassau Bank of N. Y. for that amount. And $15,000 from time to time as you may advise me and so desire.

The amount named of $30,000.00 to be loaned you on the Appeal Company's notes, endorsed by W. A. Collier, and I am to be further secured by a deposit as collateral of an equal amount of the capital stock of your company, and which stock shall not be increased without my consent during the term of this loan; neither shall any encumbrance be placed upon same.

Said loan and interest at six per cent. to be paid me in monthly installments by monies coming into my hands from the advertising in your paper, in amounts, say $1,000 per month, until paid.

S. C. BECKWITH.

O K.
MEMPHIS APPEAL COMPANY.
T. B. HATCHETT
(*Business Man'g'r*).

(Indorsed.)

As the debt is reduced I will surrender stock collateral *pro rata*.
S. C. BECKWITH.

Prior to September 30, 1893, the defendant had advanced money to said Memphis Appeal Company on said contract, and by reason thereof said Memphis Appeal Company was then indebted to
22 the defendant in an amount exceeding the sum of $20,000.00, and which has not been paid.

4. Prior to the 30th day of September, 1893, the defendant acting as the agent of the Memphis Appeal Company under said contract had obtained from the parties mentioned in Exhibit B, annexed to the complaint herein, orders for advertisements to be inserted in said Memphis Appeal-Avalanche for certain periods of time specified in the orders, which orders had been duly forwarded to said Memphis Appeal Company for execution.

5. On or about September 30, 1893, one Andrew D. Gwynne and others began an action (8852 R. D.) in the chancery court of Shelby county, Tennessee, against said The Memphis Appeal Company and others, to which action defendant herein was a party, the object of said action being to enforce a certain trust deed for the benefit of certain creditors theretofore made by said Memphis Appeal Company, a copy of which is hereto annexed, marked Exhibit A. On the 30th day of September, 1893, a decree was entered in said action appointing one William J. Chase, receiver of certain property and assets of said Memphis Appeal Company. A copy of said decree is hereto annexed marked Exhibit 1. Defendant was in Memphis, Tennessee, and was personally notified of said appointment prior to October 5, 1893.

6. Said receiver qualified under said decree of September 30, 1893, on the same day, and at once took possession of the property mentioned in said decree of said Memphis Appeal Company, and continued the publication of said Memphis Appeal-Avalanche from the 30th day of September, 1893, to the 16th day of June, 1894. He continued to act as such receiver all during the pendency of the various actions in which the decree of March 26, 1896, (Exhibit 7), was entered, as hereinafter referred to.

23 7. On October 5, 1893, defendant wrote said receiver a letter, a copy of which is hereto annexed marked Exhibit 1 A. On October 7, 1893, said receiver mailed to the defendant a notice, a copy of which is hereto annexed, marked Exhibit 2. Said letter was received by the defendant on or about October 10, 1893. On October 11, 1893, said receiver mailed to defendant and to each of the parties mentioned in Exhibit B, annexed to the complaint herein, a notice, a copy of which is hereto annexed and marked Exhibit 3. That thereupon defendant promptly notified the receiver in person that he repudiated all rights claimed by said receiver under said Exhibits 2 and 3.

8. Between September 30, 1893, and June 16, 1894, said receiver published in said newspaper certain advertisements for account of the various parties mentioned in Exhibit B, annexed to the com-

plaint herein, on orders arising our of said contract and delivered to said paper prior to September 30, 1893, the value of which advertisements as fixed by the rates mentioned in the orders so delivered to the Memphis Appeal Company as aforesaid, amounted to at least the various sums set opposite the names of the parties mentioned in said Exhibit B, and amounted in the aggregate to at least $3,902.74.

9. Claiming to act under said contract of January 3, 1891, the defendant has collected from the various parties mentioned in said Exhibit B, the sums set opposite their respective names at the dates mentioned in the margin thereof, amounting in the aggregate to the sum of $3,902.74. Said various sums were paid by said various parties in consideration of the publication of advertisements for their account in said Memphis Appeal-Avalanche between September 30, 1893, and June 16, 1894, as aforesaid, while said receiver was publishing said paper. Plaintiff subsequent to February 25, 1896, and prior
24 to the commencement of this action, demanded from the defendant the moneys so collected, but defendant has failed, omitted and refused to pay to the plaintiff said sums of money, or any part thereof, he claiming to hold the same by virtue of said contract of January 3, 1891, and claiming the right to hold said moneys for the purpose of applying same as part payment of his claim under the provisions of his letter of January 3, 1891, *supra*.

10. On or about the 5th day of October, 1893, a petition for removal to the circuit court of the United States for the western division of the western district of Tennessee was filed in said action of Andrew D. Gwynne *et al.* against The Memphis Appeal Company *et al.*, by said Samuel C. Beckwith on the ground that a separable controversy existed between the complainants therein and said Samuel C. Beckwith, and thereupon said chancery court of Shelby county Tennessee, and said circuit court of the United States for the western division of the western district of Tennessee acquired and exercised concurrent jurisdiction of said cause.

11. Thereafter a general creditor's action was brought in said chancery court of Shelby county, Tennessee, by Jacob Fink *et al.* against said Memphis Appeal Company for the purpose of winding it up as an insolvent corporation. Thereafter other creditors' actions were brought by unsecured creditors of said company. Thereafter a decree was duly entered in said court on November 6, 1893, a copy of which is hereto annexed, marked Exhibit 3 A. Thereafter, by an order duly entered in said court on January 19, 1894, all of said causes were consolidated. A copy of said order is hereto annexed, marked Exhibit 4.

12. Thereafter and during the month of April, 1894, decrees were simultaneously entered in said consolidated actions thus pending in the said chancery court of Shelby county, and in the action
25 then pending in the circuit court of the United States as aforesaid, appointing J. B. Clough and E. B. McHenry commissioners to sell, &c. A copy of the decrees thus entered in the said chancery court are hereto annexed, marked Exhibits 5 and 6. The decrees entered in the circuit court of the United States were to the same effect.

13. Thereafter and on the 16 day of June, 1894, said commissioners acting under the decrees aforesaid, sold at public auction in the city of Memphis the property aforesaid, and also all the right, title and interest of said receiver to the various sums set forth in Exhibit B annexed to the complaint herein, and in and to the claims of said receiver against the parties therein mentioned for said advertisements published by said receiver for their account in said Memphis Appeal-Avalanche between September 30, 1893, and June 16, 1894, as aforesaid, when and where same was struck off to one West J. Crawford, he paying therefor to said J. B. Clough and E. B. McHenry as such commissioners, the sum of $65,200, and he being the highest, best and last bidder therefor. That whatever title the receiver had to said sums set forth in Exhibit B was derived from said trust deed and his appointment as such receiver. On the 3d day of July, 1894, decrees were simultaneously entered in said actions thus pending in said chancery court of Shelby county, and said circuit court of the United States, confirming the sale.

14. At the time of the making of said various decrees said chancery court of Shelby county and said circuit court of the United States had jurisdiction of the subject-matter of said various actions and of the parties thereto.

15. On the 26th day of March, 1896, a final decree was entered in said consolidated causes, a copy of which is hereto annexed marked Exhibit 7.

16. Thereafter a portion of the defendants in said consoli-
26 dated causes prosecuted an appeal to the supreme court of the State of Tennessee, which is the court of last resort in said State, from said decree of March 26, 1896. Thereafter and on or about the 8th day of July, 1896, a decree or judgment was duly entered in the said supreme court of the State of Tennessee reversing in part and otherwise affirming the decree so appealed from. Said judgment of the supreme court of Tennessee was made the judgment of the chancery court of Shelby county by decree duly entered therein on July 8th, 1896, a copy of which is hereto annexed marked Exhibit 8. Said supreme court of the State of Tennessee was a court of competent appellate jurisdiction and had jurisdiction to review the decree so appealed from.

17. Prior to the commencement of this action said West J. Crawford duly assigned and transferred to the plaintiff all his claims, demands and rights of action against the defendant, which he acquired by virtue of the sale of June 16, 1894, above referred to.

18. The complaint herein is amended by striking out from the second paragraph thereof the words "the object of said action being to set aside a trust deed" and by inserting in lieu thereof the words "the object of said action being to enforce a trust deed."

Dated New York, April 14, 1898.

OTIS & PRESSINGER,
Attorneys for Plaintiff.
PORTER & KILVERT,
Attorneys for Defendant.

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EXHIBIT A.

Know all men by these presents, that this indenture made and entered into on this, the twentieth day of September, one thousand, eight hundred and ninety-three, by and between the Memphis Appeal Company, a corporation authorized and incorporated under and pursuant to the general incorporation laws of the State of Tennessee, and having its corporate situs and principal place of business in the city of Memphis, county of Shelby and State aforesaid, party of the first part, and Rob't J. Morgan and Andrew D. Gwynne as trustees, parties of the second part, and Holmes Cummins, Casey Young, W. J. Chase, Jos. Haines, John F. McCallum, L. B. McFarland, State National Bank, W. F. Taylor, Security Bank of Memhis, Union and Planters' Bank, and Bank of Commerce and Memphis City Bank, all being citizens and resident corporations of the said State, county and city, parties of the third part.

Witnesseth, that whereas, the party of the first part, the said Memphis Appeal Company, is indebted and otherwise liable and bound to the above-named parties of the third part, to the extent and in the manner which will be hereinafter more specifically stated and set out, that is to say, it is indebted to certain of the aforesaid parties of the third part as follows:

To Holmes Cummins in the sum of one thousand (1,000.00) dollars borrowed money, evidenced by its promissiory note for that amount made and executed on the 1st day of August, 1893, and payable ninety days after date to the order of W. A. Collier and by him endorsed.

To Casey Young in the sum of one thousand (1,000.00) dollars borrowed money, evidenced by its promissory note made and executed on the 1st day of August, 1893, payable ninety days after date to the order of W. A. Collier and by him endorsed, and

28 also in the further sum of $60, borrowed money, due on open account.

To W. J. Chase in the sum of one thousand five hundred dollars ($1,500), for money paid out and expended by him for and on behalf of the party of the first part at its instance and request, and in the further sum of sixty (60) dollars, borrowed money, all of which is due on open account.

To John F. McCallum in the sum of sixty dollars ($60.00), borrowed money, due on open account.

To L. B. McFarland in the sum of ($60) sixty dollars, borrowed money, and also due on open account.

All of which sums of money were advanced to the said party of the first part or paid out and expended at its request for the purpose of enabling it to carry on and prosecute its corporate business.

And the party of the first part is liable and bound to all of the aforesaid parties of the third part severally for such sums and such amounts of money as they or any of them may be compelled to pay respectively, as accom-odation endorsers, upon the following notes

for the payment of such of said notes as may have been made or held and owned by any of the said parties of the third part.

To Holmes Cummins as such endorser on three notes—the first being for the sum of twenty-one hundred (2,100) dollars, dated April 22d, 1893, payable four months from date to the order of B. M. Stratton and endorsed by him and W. A. Collier.

The second one being for the sum of twenty-two hundred ($2,200) dollars, dated June 25th, 1893, payable four months from date to the order of W. A. Collier, and endorsed by him and B. M. Stratton.

The third one being for the sum of twenty-one hundred ($2,100) dollars, dated July 25th, 1893, and payable September 8th,
29 1893, to the order of W. A. Collier, and endorsed by him and B. M. Stratton and also upon two other notes for six hundred and twenty-five dollars ($625), each dated July 22d, 1893—one of which is payable a- three months after date and the other one at four months after date to the order of W. A. Collier, and endorsed by him and said Holmes Cummins.

To Casey Young as endorser on a note for the sum of twenty-five hundred ($2,500) dollars, dated July 22d, 1893, and payable three month after date to the order of W. A. Collier and endorsed by him and B. M. Stratton.

To W. J. Chase as endorser on a note for twenty-five hundred ($2,500) dollars, dated March 29th, 1893, and payable at four months after date, to the order of B. M. Stratton at the Bank of Commerce.

To Jos. Haines as endorser or three notes for one thousand dollars ($1,000) each—the first one being dated April 22d, 1893, payable four months after date to the order of B. M. Stratton and endorsed by him and W. A. Collier.

The second one dated June 22d, 1893, payable four months after date to the order of W. A. Collier and endorsed by him and B. M. Stratton.

The third one, dated July 25th, 1893, payable three months after date to the order of W. A. Collier and endorsed by him and B. M. Stratton.

To John F. McCallum, as maker of a note for twelve hundred and fifty ($1,250) dollars, dated July 31st, 1893, payable ninety days after date to the order of W. A. Collier and endorsed by him and L. B. McFarland, and which note was delivered to the party of the first — for its accom-odation, and which was discounted by it and the proceeds thereof use- for its benefit in the prosecution of its corporate business.

To Memphis City bank the holder and to T. B. Hatchett, as endorser on note for seven thousand ($7,000) dollars, dated May 24th, 1893, payable sixty days after date to the order of B. M. Stratton.

30 To W. F. Taylor as endorser on note for fifteen hundred ($1,500) dollars, dated June 17th, 1893, payable three months after date to the order of W. A. Collier and endorsed by him and O. P. Bard.

To the State national bank, as the owner and holder of a note for twelve thousand ($12,000) dollars, dated June 25th, 1893, payable two months after date to the order of W. A. Collier, and by him endorsed,

and also as the holder of a note for five hundred ($500) dollars dated July 3d, 1893, due sixty days after date and endorsed by J. J. Williams.

To L. B. McFarland, as endorser on note for one thousand dollars ($1,000), dated August 7th, 1893, payable ninety days after date to the order of J. M. Trezevant and endorsed by him, W. A. Collier and G. C. Matthews, and also as endorser on an accom-odation note for twelve hundred and fifty ($1,250) dollars made by John F. McCallum, dated July 31st, 1893, payable to the order of W. A. Collier and endorsed by him.

To the Security Bank of Memphis, as the owner and holder of a note for twelve thousand, five hundred ($12,500) dollars, dated June 12th, 1893, payable thirty days after date to the order of W. A. Collier and endorsed by him and B. M. Stratton and R. D. Frayser.

To the Union & Planters' bank, as the holder and owner of a note for seven hundred and sixty-five ($765) dollars, dated June 3d, and due sixty days after date and endorsed by J. J. Williams.

To the Bank of Commerce as the owner and holder of a note for five hundred ($500.00) dollars, dated July 13th, 1893, payable ninety days after date, to the order of W. A. Collier, and endorsed by him and Cæsar Weatherford.

All of the foregoing and the above-described notes having been made, executed and delivered for value by the party of the first part (except the note for twelve hundred and fifty ($1,250.00) dol-
31 lars made by John F. McCallum hereinbefore named), the parties of the third part being only accom-odation endorsers thereon.

Now, therefore, the party of the first part for the purpose of securing and making certain the payment of the before-mentioned sums of money advanced, paid out, and expended for and on its account to enable it to prosecute and carry on its corporate business as aforesaid with lawful interest thereon, and to secure the payment of the other notes hereinbefore mentioned, and to indemnify and save harmless the parties of the third part against any loss or damage which they or any of them, may sustain, by reason of being the makers, holders, or accom-odation endorsers on the last before-mentioned notes, and for the further purpose of indemnifying them against any liability not exceeding twenty-five thousand (25,000.00) dollars which may be incurred by them or by the trustees hereinbefore named under their direction and approval and in making more valuable the trust property herein conveyed until it is disposed of under the subsequent terms and conditions of this instrument, and for the still further consideration of one dollar ($1.00) to it in hand paid by the parties of the third part, the receipt of which is hereby acknowledged, the party of the first part, the said Memphis Appeal Company, hereby sells and conveys to the party of the second part as trustees, the Memphis Appeal-Avalanche newspaper owned and now being published in the city of Memphis by the said party of the first part, with all of the rights, privileges, benefits, franchises, etc., belonging to or in any way pertaining to the same, which can be lawfully conveyed, together with its good will, subscription list,

advertising patronage, income and profits, and all the machinery, fixtures, appliances, furniture, material, properties, assets, etc., of every kind and character, consisting of presses, stereotyping apparatus, electros and general outfit of said newspaper, excepting
32 and excluding, however, from this conveyance the book of accounts and unexpired contracts of said paper made previous to the first day of January, 1891.

The trustees hereinbefore named, the said R. J. Morgan and Andrew D. Gwynne, are hereby vested with full and complete legal title to all the property above described and herein conveyed, and they are also hereby fully authorized and empowered to take immediate possession of the same and manage and control it in every respect as they may deem best, free from any sort of interference by the party of the first part or any of its officers or agents, subject, however to the direction and approval of a majority of the parties of the third part. And subject also to the same direction and approval they are authorized to expend any sum of money not exceeding twenty-five thousand ($25,000.00) dollars in preserving and enhancing the value of the trust property, if, in their judgment and that of a majority of the beneficiaries herein, such expenditure is necessary to secure and protect the interests of all the parties concerned in said property until it shall be released from the lien of the trust deed in the way and manner hereinafter provided.

And the party of the first part hereby expressly stipulates and agrees that if all the money advanced, paid out, and expended for and on its behalf by the before-mentioned parties of the third part, and if the before-described indebtedness and notes shall not be fully paid, or the said parties of the third part are not relieved of all liability as holders and owners of said notes or as accom-odation endorsers on such of them as they have endorsed by the payment of the sum or in some other way satisfactory to them within six months from the date hereon, then the said trustees may sell the property herein conveyed to them for cash at public or private sale for the highest price they may be able to obtain. If they shall find an opportunity to sell all or any part of said property at
33 a private sale for such price as may be deemed adequate by them and a majority of the beneficiaries, then they shall make such sale without giving any public notice thereof, but they shall not accept a less price than a majority of the parties of the third part may think the property or any part thereof offered for sale is worth. But if they shall sell at public sale, then they shall make the same in front of the Jefferson Street entrance to the Appeal building in the city of Memphis, Tennessee, at public outcry, after giving thirty days' notice through some newspaper published in the city of Memphis, of the time, terms and place of said sale. It is further stipulated and agreed, however, by the party of the first part that if the said trustees or a majority of the beneficiaries herein shall find that the expense of publishing and conducting the said Appeal-Avalanche newspaper, and that the damage and depreciation in the value of the property herein conveyed will be so great by further delay as to destroy or materially injure the

security herein intended to be given, then the said trustees at the direction of a majority of the beneficiaries shall sell the property embraced herein at any time at public or private sale for cash, with or without notice, as they, the beneficiaries, may direct.

And it is also stipulated and agreed that in case the property herein described shall be sold under any of the conditions aforesaid, the proceeds arising from said sale shall be appropriated as follows:

First. To the payment of any expenses which may be incurred by the before-mentioned trustees in making same.

Second. To the payment of any sum or sums of money which may be paid out and expended by said trustees under the direction of a majority of the beneficiaries herein to preserve and ren-
34 der more valuable the property here conveyed as provided in a former part of this instrument.

Third. To the payment of the moneys advanced paid out and expended on behalf of the party of the first part by Holmes Cummins, Casey Young, W. J. Chase and L. B. McFarland, amounting to the sum of thirty-eight hundred ($3,800) dollars so paid out and expended by the parties last aforesaid, and to the payment of the accom-odation note for twelve hundred and fifty ($1,250) dollars made by John F. McCallum, dated July 31st, 1893, endorsed by L. B. McFarland, and due ninety days from date. It being the purpose and intention that all of the above-mentioned indebtedness and sums of money shall be a first and paramount lien upon all the properties herein conveyed.

Fourth. To the payment *pro rata* of the other notes hereinbefore enumerated, held and owned by the parties of the third part, or any sum or sums of money which any of the said third parties may be compelled to pay or remain liable for by reason of being accom-odation endorsers thereon.

Fifth. If any part of the proceeds arising from the sale of said property shall remain in the hands of the trustees after making the payments above provided for, the same shall be paid over to the party of the first part or any one of its officers or agents authorized to receive and receipt for same.

In case all the debts and obligations herein provided for are fully paid off and discharged or otherwise arranged to the satisfaction of the beneficiaries then the property embraced herein shall be reconveyed by the aforesaid trustees to the party of the first part and this conveyance shall be null and void; otherwise it is to remain in full force and effect subject to all the conditions which it contains.

It is also stipulated and agreed that if either of the before-
35 mentioned trustees shall die, resign or refuse to serve, then a new trustee or trustees to take their places may be appointed by a majority of the beneficiaries herein, who, when appointed, shall be clothed with all the rights and powers of the trustees already named. And said trustees before appointed and provided for may use and appropriate the income and profits of the aforesaid properties to the payment of the debts and obligations herein secured in the order and manner before directed.

The making of oath and giving bond by the aforesaid trustees, as required by a statute, is expressly waived and assented to by all the parties to this conveyance.

In witness whereof, the party of the first part has caused this instrument to be signed by its proper officer and sealed with its corporate seal on this, the — day of September, 1893 A. D.

(Signed) THE MEMPHIS APPEAL CO.,
By W. A. COLLIER, *Pres.*

Attest: JAS. S. MAHAFFY, *Sec.*

STATE OF TENNESSEE, }
County of Shelby. }

Be it remembered: That on this, the 21st day of September, 1893, personally appeared before me, Robert M. Beattie, a notary public, within and for said — and State, duly qualified and acting as such, the within-named bargainor, The Memphis Appeal Co., by its president, Wm. A. Collier, and its secretary, James S. Mahaffy, personally known to me to be such president and secretary respectively, with each of whom I am personally acquainted, and who severally acknowledged that they executed the within instrument for
36 the purposes therein contained in behalf of said The Memphis Appeal Company, and also as their own free act and deed. And the said Mahaffy, secretary, stated and acknowledged that he attached thereto the corporate seal of said company, by authority and direction of its board of directors.

Witness my hand and notarial seal at my office in Memphis, Shelby county, Tenn., this Sept. 21st, 1893.

(Signed) ROB'T M. BEATTIE,
Notary Public.

EXHIBIT 1.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house in the city of Memphis on the 30th day of September, 1893.

Present: Hon. William D. Beard, chancellor.

ANDREW D. GWYNNE ET AL. }
vs. } Decree Appointing Receiver. R. D. 8852.
THE MEMPHIS APPEAL COMPANY ET AL. }

The cause was heard on the application of the complainant for the appointment of a receiver before the Hon. W. D. Beard, chancellor, at chambers, and upon consideration hath the court is pleased to grant the prayer of the bill; and the parties in interest agreeing that William J. Chase is a suitable person, the court is pleased to appoint him a receiver of all the property mentioned and
37 described in the bill of complaint and upon the executing a bond in the penalty of $25,000, to be approved by the clerk and master, conditioned for the faithful performance of the trust in him reposed, — is hereby authorized to take possession of the property described in the trust deed mentioned in the bill, with full

power and directions to continue the publication of the daily and weekly Memphis Appeal-Avalanche; and to the end that he may preserve, manage, operate and build up the trust property, he is vested with authority to pay the current expenses of the publication of the said paper, and to collect each and every of the several assets conveyed to the trustees, Gwynne and Morgan, and to do and perform everything that is requisite and necessary for the administration of the said trust and the publication of the said paper as will be most conducive to the interests of the parties.

But of the moneys which come into his hands he will pay without further order.

No. 1. The current expenses of the publication of the daily and weekly Memphis Appeal-Avalanche and the expenses incurred in preserving the trust property.

No. 2. The several amounts advanced by Andrew D. Gwynne and Robert J. Morgan, trustees, and expended in the publication of the said paper and in preserving the trust property since the execution of the trust deed.

And to the end that the receiver may be enabled to administer the trust herein, he is directed and empowered to issue from time to time, and only when necessary, his certificate of indebtedness in such amounts as may be deemed proper, not exceeding $25,000 in the aggregate, to be numbered from one consecutively up to and inclusive of the last certificates issued, each certificate to express on its face the limitation in amount of the whole issue as above, viz: $25,000; and the certificates so issued are, as are now and
38 here declared to be, a first and paramount lien on all of the trust property and the earnings derived from its operation.

The receiver will file at his own convenience an inventory of the trust property, and will file monthly statements herein showing in detail his receipts and expenditures, each item of expenditure to be accompanied by a voucher. He will apply from time to time to the court for such instructions as he may require in the administration of his trust, and if at any time he requires the advice of counsel he will submit to the court the advisability of encumbering the trust property with counsel fees.

And it further appearing to the court that the defendants The Sabine-Robbins Paper Co., The National Cash Register Co., The Dupont Paper Mill Co., The Rochester Paper Co., C. P. J. Mooney and E. Whitmore, from the statement made by Mr. T. B. Turley, one of their solicitors, in open court, that they severally have executions in the hands of the sheriff against the Memphis Appeal Company, upon their application the court is pleased to order that the appointment of a receiver herein shall in nowise effect their several rights, if any they have, to cause the sheriff of Shelby county to levy their executions on the property of which the receiver is directed to take possession; but if said levy shall be made, the property levied on will be left in the custody of the receiver as agent for the sheriff until the validity of such levy is determined. Nothing in this order determines in any way the validity of said executions or any levies made thereon.

WILLIAM D. BEARD, *Chancellor.*

39 EXHIBIT "1 A."

In the Chancery Court of Shelby County, Tenn.

ANDREW D. GWYNNE and ROBERT J. MORGAN
vs.
MEMPHIS APPEAL CO. ET AL. } R. D. No. 8852.

To William J. Chase:

You will please take notice that the above-styled suit has this day been removed from the chancery court of Shelby county, Tenn., to the circuit court of the United States for the western division of the western district of Tennessee, at Memphis where it is now pending; and that no further proceedings can be had in the said suit in the said chancery court. You informed me on Tuesday last that you intended to send out a circular to advertising agents and my advertising customers, to the effect that owing to a change in the management of the Appeal Company you would receive orders from them direct in future, and that I, who have heretofore acted as the special agent of the Memphis Appeal Company, would no longer have exclusive control of the advertising business heretofore entrusted to me. You have also taken from the heading of the editorial column of the Appeal-Avalanche the notice heretofore appearing therein, that the eastern office of the Appeal-Avalanche was room 48, Tribune building, New York, and 509 Rookery building, Chicago, and that I was the special eastern agent of the said paper.

40 And the attorneys advising you have written me that they have advised you that in the operation of the Appeal-Avalanche you are in no way bound by my contract with the Memphis Appeal Company, and that you should collect all the revenues of the paper arising from the publication of advertisements in the territory mentioned in the Memphis Appeal Company with me, and that all contracts of agency or employment made with the Appeal Company as to the newspaper are now terminated, and that any one seeking to do business with the paper must make new contracts with you, who have unlimited authority in the matter. And you have informed me that you have received such advice and proposed to be governed by it in your conduct of the business of the said newspaper. And you have informed me in addition that you would not recognize the contract between the Memphis Appeal Company and myself as of any validity whatever, and that you considered it cancelled and abrogated and of no force. Now, this is to notify you that the contract between the Memphis Appeal Company and myself, of date January 3d, 1891, and which you have heretofore seen and read, is in full force and effect, and that I shall insist on its full performance in every respect by the Memphis Appeal Company, and by you and by all others who undertake in any respect whatever to represent or act for that company, or who has the management or control, or undertakes to manage or control its assets or property, or any part of them, or who undertakes to conduct or control the publication of

the said newspaper, the Memphis Appeal-Avalanche. And I further notify you that I shall hold you personally responsible in damages for any interference by you, by letter, word or otherwise, with the full and complete execution of the said contract, in every respect according to its true intent and meaning, and that the circular referred to, and the withdrawing of the notice mentioned above
41 from the head of the editorial column of the Memphis Appeal-Avalanche, and all like acts or interferences *with* are breaches of the said contract, and are calculated to do me great injury, and that I hold you responsible for the consequences of all such acts.

S. C. BECKWITH.

MM. M. RANDOLPH & SONS,
PORTER & KILVERT,
Attorneys and Counsels for Mr. Beckwith.

EXHIBIT 2.

MEMPHIS, TENN., *Oct. 7th*, 1893.

In the Chancery Court of Shelby Co., Tennessee.

ANDREW D. GWYNNE ET AL.
vs.
THE MEMPHIS APPEAL CO. ET AL.

To S. C. Beckwith:

In the matter of the notice from you of date Oct. 5th, 1893, addressed to myself, I beg to advise you that I am in charge of the business and property of the newspaper, the Memphis Appeal-Avalanche only as receiver under appointment in the above-styled cause by the chancery court above named. As such in the conduct of said business, I am advised that it is my duty while carrying out such advertising contracts as were in course of completion in the current publications of said paper, whether made by said company through you as agent or directly with advertisers yet that as to all matters appearing in said paper from and after my appointment, it was likewise my duty to secure to the trust estate of which I am receiver all the revenues therefrom.

Therefore, and to this extent as I am advised I cannot
42 recognize any contract you may have had with said company giving you control of such business or the revenues therefrom, your right thereto according to the information I have, being but a floating and unsecured claim or debt against said company and not a lien upon the trust estate of which I am the receiver. If I am in error as to any fact as above stated, I should be glad to have correction at once. I need hardly advise you that I do not represent the Memphis Appeal Company, nor is it affected in any way by what I may do.

Yours respectfully, W. J. CHASE, *Receiver.*

EXHIBIT 3.

MEMPHIS, TENN., *Oct.* 11, '93.

Mr. S. C. Beckwith, Tribune building, New York city.

DEAR SIR: All the business and properties of the daily and weekly Appeal-Avalanche have been placed in the hands of W. J. Chase, as receiver under appointment as such by the honorable chancery court of Shelby county, Tennessee, in the cause of Andrew D. Gwynne and others against the Memphis Appeal Company and others. There will be no interruption in the current business of the paper excepting only that all business will be hereafter handled and collections made by the receiver direct, instead of passing through the hands of Mr. S. C. Beckwith, who has acted as general agent of the Memphis Appeal Company, with offices in Chicago and New York.

Yours truly,

O. P. BARD,
Manager for the Receiver.

P. S.—The above letter has been mailed to advertisers and advertising agencies. Please govern yourself accordingly.

43 EXHIBIT 3 A.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house in the city of Memphis, on the 6th day of November, 1893.

Present: Hon. William D. Beard, chancellor.

JACOB FINK ET AL. *vs.* MEMPHIS APPEAL CO. ET AL. } 888 R. D. Orders Sustaining Bill as General Creditors' Bill, etc.

This cause came on to be heard this day upon motion of the complainants for leave to make W. J. Chase the receiver appointed by this court heretofore in the several causes, a party defendant in this cause, which being considered by the court, is overruled. And the bill on this cause having been read by the court and it appearing to the court that it is filed on behalf of complainant and all the other creditors of the Memphis Appeal Co., it is ordered by the court that the bill be sustained as a general creditors' bill and stated as a general creditors' bill, and as such inure to the benefit of all creditors who may claim its benefits or may come in under it. And the clerk and master is ordered to make publication in some newspaper published in the city of Memphis, notifying all the creditors of the Memphis Appeal Co. of the filing of the bill in this cause, and requiring them to come in by petition and file and prove their respective claims against said Memphis Appeal Co. on or be-
44 fore the (15) fifteenth day of May, 1894, or they may be excluded from the benefits of this proceeding.

And on motion of complainants, the institution of any separate

suits by any of said creditors or claimants is hereby enjoined, and the master will so state in said publication notice.

All creditors filing petitions in this cause will execute and file proper prosecution bonds or take the pauper oath in lieu thereof.

Such petitions may be filed without further leave than this order.

WILLIAM D. BEARD, *Chancellor.*

45 EXHIBIT 4.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house in the city of Memphis, on the 19th day of January, 1894.

Present: Hon. William D. Beard, chancellor.

A. D. GWYNNE ET AL. *vs.* MEMPHIS APPEAL CO.	8852.	Order of Consolidation.
CHRIS HETTINGER *vs.* MEMPHIS APPEAL CO.	8851.	
JOHN FINK ET AL. *vs.* MEMPHIS APPEAL CO.	8888.	
JAMES MYRIOK *vs.* A. D. GWYNNE ET AL.	8870.	

This cause coming on to be heard on the motion of the complainants in the case of A. D. Gwynne *et al. vs.* Memphis Appeal Co. *et al.* for a consolidation of all of the above-styled causes, and it appearing to the court that these causes should be consolidated and that all of the complainants in the several causes consenting thereto, it is ordered that the several causes be and the same are
46 hereby consolidated, but the right of the complainants to appeal from the decree on demurrer in Hettinger *vs.* Memphis Appeal Co., No. 8851, R. D., is to be in no manner affected by the entry of this decree, he having the right to take this case to the supreme court just as though this decree had not been entered.

WILLIAM D. BEARD, *Chancellor.*

EXHIBIT 5.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house in the city of Memphis, on the 6th day of April, 1894.

Present: Hon. William D. Baird, chancellor.

A. D. GWYNNE ET AL. vs. MEMPHIS APPEAL CO. ET AL.	8852 R. D.	Decree of Sale.
J. B. MYRICK ET AL. vs. D. D. GWYNNE ET AL.	8870 R. D.	
JACOB FINK ET AL. vs. MEMPHIS APPEAL COMPANY ET AL.	8888 R. D.	

In these causes, which have heretofore been duly consolidated, came on, on this 6th day of April, 1894, before his honor,
47 W. D. Beard, chancellor, etc., to be further heard, the motion of the several complainants, except cross-complainant Jas. B. Loring, for a sale of the newspaper, the Appeal-Avalanche, and properties in the hands of the receiver herein; when it appearing to the court that the defendants under the leave given by the order and decree rendered herein at the last term, to wit, the 26th day of March, 1894, to within ten days from that date nominate some suitable and proper person as receiver, to take the place of W. J. Chase, as receiver, etc., herein, have failed to suggest or nominate any other person as such receiver. And the court being of opinion, as hereinbefore adjudged, that because of the insolvency of the defendant The Memphis Appeal Company, as well as because that the business of conducting the newspaper, the Memphis Avalanche, and its publication and the property in the hands of the receiver herein has been and is not self-supporting, and that the earnings, income and profits thereof have been and are insufficient to meet and defray the cost and expense incident thereto, and that the value of said newspaper and property and the security of the complainants' creditors, etc., has been and is being deteri-rated and lessened under its contract by this court through its receiver, in that the necessary cost and expense thereof exceeds its income and earnings.

That (for these several reasons) it is to the manifest interest of all the parties that said newspaper and property should be sold. It is therefore accordingly so ordered, adjudged and decreed.

It is, therefore, further ordered, adjudged and decreed that the receiver, W. J. Chase, after first advertising the time, terms and place of sale, for a period of thirty days, in one or more newspapers, published in the city of Memphis, do proceed to sell the Memphis Ap-

peal-Avalanche newspaper, with all the rights, privileges, benefits, franchises, etc., belonging to or in any way pertaining to
48 same, together with its good will, subscription list, advertising patronage, income and profits, and all the machinery, appliances, furniture, material, property, assets, etc., of every kind and description and the general outfit of the newspaper now in the hands of the receiver in these causes.

He will sell all and every kind and description of property in his hands, saving and except the uncollected book accounts of the Memphis Appeal Co. accruing prior to his appointment as receiver, and which were placed in his hands for collection. Such of these accounts as remain uncollected will not be sold.

All accounts which may be or are to become due to the receiver by reason of the operation of the newspaper in his hands will pass to and be acquired by the purchaser at this sale, who will become the full owner of the same. And such purchaser will take the property decreed to be sold herein, subject to all of the contract obligations incurred by the receiver, and will assume the payment of same, including any amount due the receiver on the day of sale for overchecks made by him for personal advances on account of the property in his hands. Excepting only the certificates issued by the receiver for the payment of which the purchaser shall in no way be liable.

He will sell said property at public outcry to the highest bidder at the front door or Main Street door of the Appeal building at the corner of Main and Jefferson streets, in Memphis—and on the following terms—that is a cash payment of fifteen thousand dollars, and the balance on a credit of one and two years, taking from the purchaser two notes equal in amount with good sureties bearing interest from date and retaining a lien on the property sold for the purchase price.

The purchaser shall pay to the receiver upon the acceptance of his bid, instanter, $5,000, five thousand dollars, or his bid shall
49 be ignored, and the sale proceeded with as if his said bid had not been made.

The purchaser shall proceed forthwith to comply with the terms of his bid as provided by this decree, and if he fail so to do, the said sum of $5,000, advanced by him shall be forfeited and become a part of the fund in the hands of the receiver; and the receiver shall resell the property.

The receiver will offer the iron safe separately, selling same for cash.

The receiver will report all proceedings under this decree of the court.

The purchaser at the sale herein ordered will acquire the absolute title to all the property decreed to be sold, free from all claims, liens, and encumbrances whatever, save as provided above as to the contract obligations of the receiver; and the proceeds of sale will stand in these causes in lieu and place of the property itself.

All questions as to the distribution of the proceeds of sale are re-

served for further decree. Exceptions to this decree and all parts thereof are reserved by the Memphis Appeal Co.

WILLIAM D. BEARD, *Chancellor.*

50 EXHIBIT 6.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house in the city of Memphis, on the 30th day of April, 1894.

Present: Hon. William D. Beard, chancellor.

A. D. GWYNNE ET AL. *vs.* MEMPHIS APPEAL CO. ET AL.	8852 R. D.	Decree Amending Decree of Sale of April 6, 1894.
J. B. MYRICK ET AL. *vs.* A. D. GWYNNE ET AL.	8870 R. D.	
JACOB FINK ET AL. *vs.* MEMPHIS APPEAL CO. ET AL.	8888 R. D.	

In these causes so much of the decree of sale rendered herein at a former day of this term, viz., the 6th day of April, 1894, and entered on page 605 of Minute Book 86, as authorizes and directs W. J. Chase the receiver of the newspaper the Appeal-Avalanche and other properties to make the sale thereof as also in said decree set forth is now set aside on motion of the defendant Memphis Appeal Company, and J. B. Clough and E. B. McHenry, are now and hereby appointed special commissioners of this court for the making of said sale as ordered and decreed in said former
51 order herein, and it is ordered, adjudged and decreed that said E. B. McHenry, who is the clerk and master of this court, and J. B. Clough, who is the clerk of the circuit court of the United States in this county, as such commissioners be clothed with all the powers and charged with all the duties that were by said former decree herein conferred or charged upon the said W. J. Chase, and they will, as such commissioners, proceed to execute said decree of sale. In making the motion not to have said sale made by W. J. Chase, receiver, &c., the Memphis Appeal Co. does not waive any right or equity which it may have, to resist said sale, but on the contrary, reserves all grounds of exception and objection thereto as fully as if said motion had not been made.

WILLIAM D. BEARD, *Chancellor.*

52 EXHIBIT 7.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house in the city of Memphis, on the 26th day of March, 1896.

Present: Hon. William D. Beard, chancellor.

A. D. GWYNNE ET AL. *vs.* MEMPHIS APPEAL CO. ET AL. } 8852 R. D.

and

JACOB FINK ET AL. *vs.* MEMPHIS APPEAL CO. ET AL. } 8888 R. D.

and

J. B. MYRICK ET AL. *vs.* MEMPHIS APPEAL CO. ET AL. } 8870 R. D.

and

CHRIST. HETTINGER *vs.* MEMPHIS APPEAL CO. ET AL. } 8851 R. D.

} Final Decree.

These consolidated causes came on to be finally heard upon the pleadings, orders and proof on file herein.

And the court is of opinion, and adjudges and decrees
53 that the deed of conveyance by W. A. Collier and Alice T. Collier, dated June 7th, 1892, conveying to the Memphis Appeal Company the lot of land and building thereon, known as the Appeal building, on the southwest corner of Main and Jefferson streets, in Memphis, Shelby county, Tennessee, 74½ feet on Main street by 105 feet on Jefferson, was valid and operated to vest title to said property in the Memphis Appeal Co. subject to the incumbrances upon the said land at the time of the execution of the said conveyance. That the deed of trust executed on June 7th, 1892, by the Memphis Appeal Co., to the Memphis Trust Co., to secure the 200 bonds for $1,000 each of that company, the same being a part of the purchase-money in said Appeal building, covered all the property of the Memphis Appeal Company, including the newspaper and the newspaper's good will, etc., and was valid and binding upon the Memphis Appeal Company. That thereafter these bonds were pledged by W. A. Collier one hundred of them with the Memphis Trust Co., under an agreement that the proceeds of same should be used in paying the indebtedness of the Lombard Investment Co.,

secured by a prior trust deed on said property, and after payment of same to be applied to the extinguishment of any other incumbrances on said above-described property, and then to the indemnity of W. F. Taylor as an endorser on a certain note for $6,500.00 described in said agreement; at the same time fifty of said bonds were pledged by W. A. Collier with the Memphis Trust Co., as collateral to a loan to him of $30,000.

Shortly thereafter forty of these were pledged by W. A. Collier as collateral to a loan from the Jennings Trust Company to him of $28,000, and the remaining $10,000 were deposited by W. A. Collier as collateral security in some manner, with the Security Bank of Memphis.

The court is further of the opinion, and so orders, adjudges and decrees upon the facts in these causes, that said two hundred
54 bonds of $1,000 each are discharged and satisfied as an indebtedness of the Memphis Appeal Co., and that James B. Loring has acquired the valid title to the building at and for the price of $200,000, the face value of said bonds, subject to all the prior liens and the claims thereon, and charged with the liability to pay the debts as hereinbefore set out, for which said two hundred mortgage bonds of the Appeal Co., *well* pledged as collateral, so far as the same may remain unpaid and be due, according to the terms of the contract by which they were pledged. All relief asked for by James B. Loring in his cross-bill, except as herein granted, is denied, and the cross-bill is dismissed at the cost of the said Loring.

The court is further of the opinion that the receiver in these causes was not liable for rent to any person by reason of his occupancy of a portion of the Appeal building, and accordingly orders, adjudges and decrees that the purchaser W. J. Crawford, is not liable to Mrs. Alice T. Collier, for any claims of rent arising from this source, and her petition seeking to recover same is dismissed.

The court is further of the opinion that no lien was fastened on any of the assets of the Memphis Appeal Company by the levy of the execution in the case of Foley-Williams, Mfg. Co. *et al. vs.* Memphis Appeal Co. *et al.*, and therefore dismisses the cross-bill of S. C. Beckwith, at the cost of the said Beckwith, and the petition of Lawrence Lamb, filed in the case of Fink *vs.* Memphis Appeal Co., in so far as it claims any lien upon the fund in court; but adjudges the said Lamb to be a general creditor unsecured of the Memphis Appeal Co., to the extent of any sums which he may have paid out on behalf of the Memphis Appeal Company, in satisfying the judgment in said cases.

The cross-bill of Mrs. Iris C. Ryder, filed in the case of Jacob Fink *et al. vs.* Memphis Appeal Co. *et al.*, is likewise dismissed in so far as it claims any lien upon the fund in court, but she is de-
55 clared to be a general unsecured creditor of the Memphis Appeal Co. for the amount of her judgment, with interest.

And it further appearing that on September 20th, 1893, the Memphis Appeal Co. executed a deed of trust on its property, the Memphis Appeal-Avalanche newspaper, with all of its assets, good will, etc., to A. D. Gwynne and R. J. Morgan, as trustees, to secure certain

persons in amount hereinafter mentioned, the proceeds of which property constitute the fund now in the registry of this court, and that this deed of trust has upon demurrer in these causes been adjudged valid on its face, the court is of opinion that the said deed of trust was executed for the purpose of enabling the Memphis Appeal Company to proceed with the prosecution of its business, and to keep it a going concern, and is a valid and binding encumbrance upon the assets therein conveyed.

And the court being of opinion that all the debts mentioned in the said deed of trust are lawful and valid debts of the Memphis Appeal Company, it is therefore ordered adjudged and decreed that the several beneficiaries named in the said deed of trust do have and recover of the Memphis Appeal Company, the following amounts, respectively:

Holmes Cummins, the sum of	$10,051 50
Casey Young, the sum of	4,035 00
W. J. Chase, the sum of	4,652 50
Joseph Haines, the sum of	3,500 00
John McCallum, the sum of	1,447 00
Memphis City Bank, the sum of	8,111 47
W. F. Taylor, the sum of	1,747 50
State National Bank, the sum of	13,838 00
L. B. McFarland, the sum of	1,134 00
Security Bank, the sum of	14,508 33
Union and Planters' Bank, the sum of	893 80
Bank of Commerce, the sum of	582 00

But it *is* further appeared, that the said Security Bank, has
56 recovered from W. A. Collier, one of the endorsers on the note secured by the deed of trust the sum of $5,000 on September 21, 1893, it is ordered that in the distribution of the trust fund hereinbelow ordered the said bank shall receive its *pro rata* on the basis of the judgment above rendered up to or until it is paid the sum of $8,841.25, with interest, until paid the amount now due after crediting the above judgment with the sum of $5,000, and after paying the attorneys as hereinafter adjudged in full, W. A. Collier and Joe Haines, his assigns are denied any right of subrogation by reason of the payment of $5,000.

And it further appearing that the two notes in favor of the Memphis City Bank and the Security Bank of Memphis, secured by the said deed of trust, and on which judgment is hereinabove given, provides for the recovery of the attorneys' fees in the event of litigation with the Memphis Appeal Co. in the collection of said notes; and it appearing that this litigation has ensued and judgment has been recovered herein, the court is of opinion that the Memphis City Bank and Security Bank of Memphis are entitled to recover reasonable attorneys' fees in this cause against the Memphis Appeal Company, and a reference is here ordered to the clerk and master to ascertain and report the reasonable attorneys' fees for such service.

Such sums as shall be determined upon such reference will become a part of the indebtedness secured by said deed of trust, upon which

the said banks will be allowed a *pro rata* in the distribution by the said trustees.

It is further ordered, that the entire fund in court in these causes, saving and except the provisions herein made for the complainants in the bill of J. B. Myrick *et al. vs.* A. D. Gwynne *et al.* and The Memphis Appeal Co. and saving and except costs which are ordered to be first paid, *to* be paid over to A. D. Gwynne and R. J. Mor-
57 gan, trustees, or their solicitors of record, Cummins & Percy, to be by them distributed in accordance with the provisions and priorities of the trust deed to them.

A lien is declared in favor of said Cummins & Percy upon said fund for their fees as solicitors for the said trustees and complainant in said cause.

A reference is ordered to determine the compensation which should be allowed A. D. Gwynne and R. J. Morgan and Cummins & Percy for their services on behalf of the trust which they have represented.

But before the said fund is so paid out *of* the debts sued on in the bill of J. B. Myrick *et al. vs.* Memphis Appeal Co., must be paid without interest — of said fund, the court being of opinion (and the counsel for said A. D. Gwynne *et al.* having stated in open court at the argument that they admitted same) that such complainants who were laborers on the Memphis Appeal-Avalanche had a prior lien to the said deed of trust, for wages due them for work and labor done within three months prior to the filing of said bill.

The petitions of T. D. Taylor and Lawrence Lamb, filed in Fink *et al. vs.* Memphis Appeal Co. *et al.*, are dismissed because they have no lien as employees on the fund in court, but they are declared to be general unsecured creditors of said Appeal Company.

And it appearing to the court that the following are the parties who filed the bill in the case of J. B. Myrick *et al. vs.* A. D. Gwynne *et al.*, No. 8870, R. D., and that the following are the amounts of their claims respectively, for services as employees upon and for the newspaper, the Appeal-Avalanche, for which a lien exists upon the proceeds of the property sold herein, and otherwise, as herein decreed, viz:

J. B. Myrick	$43 60
J. H. Harris	16 90
Ed. M. Wright	23 00
58 Jos. Crabb	23 30
W. A. McVey	25 60
Walker Wood	3 60
W. H. Johnson	124 75
Hugh H. Huhn	67 68
Porter Colhouer	27 15
M. W. Connolly	2 25
Burton Connolly, Jr	5 00
Walker Kenneday	281 04
Thos. Madden	46 26
James Parker	66 85

Andrew Whitley	8 60
Mrs. L. H. Jones	35 00
John H. Lee	11 87
Amie Aeschelman	7 18
Delia Martinoya	106 25
R. S. Halley	266 25
R. P. Risley	103 60
C. L. Arnold	3 00
C. A. Black	107 10
Geo. Besser	14 23
L. W. Cursey	388 60
Sam. Croft	150 81
Sam. Hornbrook (to be paid George Edwards, $38.90)	
Sam. Hornbrook (to be paid J. F. Holst, $61.10)	140 84
Wm. Looney	63 08
Dudley Lockwood	162 81
John Looney	16 43
R. D. Reid	19 98
Wilson Winn	40 26
Charles Woeller	239 88
G. C. Matthews, to be paid Holmes Cummins, assignee	400 00
O. P. Bard	258 32

For all of whom Frazer & Heath and Dehaven & Myrick are attorneys.

	Fred. J. Brebban	229 60
59	H. W. Beck, to be paid to Mattie Beck, widow	583 16
	W. L. Trask	352 26
A. Maury		428 77
John D. Huhn		44 64
Jacob Fink		56 00
J. Harvey Matthews		43 60
W. P. Tackett		40 00
S. L. Barinds		139 45
Pitkin Wright		124 80
D. Bergman		105 00

It is therefore ordered and decreed that the claims of the said various employees on said newspaper be fixed at the above amounts, respectively, and that the same are decreed to be liens on the funds and property as hereinbefore provided, and will be paid out of said funds and property to said solicitors or said parties, respectively.

A lien is decreed in favor of the parties represented by Frazer & Heath and Dehaven & Myrick for services in these litigations, after the satisfaction of which, if desired parties entitled to the sums aforesaid, or their assigns, may collect the sums respectively in person.

The costs in the case of A. D. Gwynne *et al. vs.* Memphis Appeal Co. *et al.* and J. B. Myrick *et al. vs.* Memphis Appeal Co. *et al.* and such costs in the case of Fink *vs.* Appeal Co. *et al.*, as hereinafter adjudged, will be first paid out of the fund in court before any distribution is made, as above ordered.

As to these two causes, this decree finally determines and disposes of same.

In the causes of Jacob Fink *vs.* Memphis Appeal Co. *et al.* and Cris. Hettinger *vs.* Memphis Appeal Co. *et al.*, which has heretofore been consolidated with, have been heard with the two above causes and the said bills, amended and supplemental bills and cross-bills filed therein, so far as they seek any interest in the fund in
60 court, or to fasten any claim upon the assets and properties covered by the deed of trust made to A. D. Gwynne *et al.* by the Memphis Appeal Co. are dismissed, it appearing to the court that the fund in court will be insufficient to pay the claims already adjudged, as prior encumbrances thereon; and, for the reason hereinbefore stated, said bills, supplemental bills and cross-bills are dismissed, so far as they seek to fasten any claims upon the Appeal building and lot.

In these causes a reference is ordered to the clerk and master to take proof and report what persons filing petitions in these causes are creditors of the Memphis Appeal Co., and the amount and character of their claims. But it further appearing that there are no assets and properties of the Memphis Appeal Co., out of which the claim- of the general creditors can be paid, which have been impounded in these causes, this reference will not be executed except at the request of said general creditors.

Under his cross-bill it is decreed that W. J. Chase recover of the Memphis Appeal Company $5,662.34, but as he is decreed a preferred creditor to the amount of $4,652.50 by this decree, he is now decreed a general creditor for the balance or $1,099.84, so that his whole claim as preferred and general creditor is decreed to be $5,662.34.

The costs in the case of Jacob Fink *et al. vs.* Memphis Appeal Co. *et al.* accruing prior to the sale of the assets in the hands of the receiver, except such costs as were incurred in the filing of petitions in said cause, are ordered to be paid out of the fund in court, including a reasonable fee to the solicitor filing the general creditors' bill for his service up to that time, and a reference is ordered to determine what should be the amount of said fee.

The costs which have accrued in said cause in the filing of petitions and cross-bills therein, and which have accrued since
61 the sale of the assets in these causes, are taxed against the complainant and the several parties filing petitions and cross-bills, respectively, each party being taxed with the costs of their respective petitions, original bills, and *pro rata* in all the other costs in said cause.

The costs in the cause of Chris. Hettenger *vs.* Memphis Appeal Co. *et al.*, are taxed against the complainant in said cause. The petition of Adams & Trimble for attorneys' fees as solicitors of the Memphis Appeal Co. is disallowed and dismissed.

From so much of this decree as adjudges that the execution in favor of said judgment creditors in the case of Foley-Williams Mfg. Co. *vs.* Memphis Appeal Co. *et al.* were no liens on the assets from which the fund in court was derived, and from so much of the de-

cree as adjudged that Lawrence Lamb is not entitled to a lien on the fund in court for the payment of the amount paid by him as aforesaid, and that the costs in the case of Foley-Williams Mfg. Co. *et al.* are not a lien upon the fund in court, the said Lawrence Lamb prays an appeal, which is in the exercise of discretion vested in the court by statute, granted on his executing a bond, with security for costs, in the sum of $1,000; and that said S. C. Beckwith prays an appeal from so much of the decree as adjudges that he has no lien upon the fund in court, for the payment of his judgment against the Memphis Appeal Co., and dismisses his cross-bill, which is in the discretion aforesaid by the court granted, upon his executing a bond for costs in the sum of $1,000.

All of which is ordered, adjudged and decreed.

For all costs awarded above, other than that directed to be paid out of the fund, executions will issue against the respective parties and their sureties.

WILLIAM D. BEARD, *Chancellor.*

62 EXHIBIT 8.

At a term of the chancery court of Shelby county, Tennessee, held at the court-house, in the city of Memphis, on the 8th day of July, 1896.

Present: Hon. William D. Beard, chancellor.

JACOB FINK ET AL. vs. MEMPHIS APPEAL CO. ET AL. } 8888 R. D.

A. D. GWYNNE ET AL. vs. MEMPHIS APPEAL CO. ET AL. } 8852 R. D.

} *Procedendo* on Decree.

These consolidated causes coming on to be heard this day on the *procedendo* of the supreme court of Tennessee, which *procedendo* is in the words and figures as follows:

A. D. GWYNNE ET AL. & R. J. MORGAN, Trustees, vs. THE MEMPHIS APPEAL CO. ET AL. } No. 60.

and

JACOB FINK ET AL. vs. MEMPHIS APPEAL CO. ET AL. }

} Shelby Chancery Docket.

"These causes were heard upon the transcript from the
63 chancery court (part II) of Shelby county, and having been fully considered by the court it is adjudged as to matters raised by the assignment of error as follows:

First. That the attempted increase of the capital stock of the Memphis Appeal Company to $250,000 from $100,000 was illegal, being contrary to the provisions of its charter and that the issue of $200,000 of its bonds by the Memphis Appeal Company was *ultra vires* and same are void.

Second. The conveyance made by W. A. Collier and Alice T. Collier to the Memphis Appeal Company on June 7th, 1892, and by the Memphis Appeal Company to the Memphis Trust Company on June 7th, 1892, of the property described as being in Memphis, Shelby county, Tennessee, and situated at the northwest corner of Main and Jefferson streets, and fronting 74½ feet more or less on the west side of Main street, and running back between parallel lines with the north line of Jefferson street 105 feet more or less are adjudged to be null and void; because said Appeal Company had no power to buy any property of that character and extent and had no power to issue its purchase-money obligation therefor, the latter in connection with its then existing debts, being far in excess of the rightful capital stock of said company, and accordingly all obligations incurred by the Appeal Company in connection with the attempted purchase of this property are declared to be void.

The title to said above property is now hereby declared to be vested in J. B. Loring under his purchase of September 10th, 1894, from Collier and wife, subject to the outstanding lien of the trust deed made to John I. Dunn, as trustees to secure an indebtedness of $66,000 with interest thereon due the Lombard Investment Company or its assigns which lien is declared to be a first lien on said property.

64 It is now adjudged that an equitable mortgage was created in favor of Casey Young, John McCallum, L. B. McFarland and Holmes Cummins, which secured them in the amounts advanced by them to the Memphis Appeal Company, on or about August 1st, 1893; and the court adjudges that under said equitable mortgage, the following-named parties are entitled to be paid out of the fund in court in full, the following amounts with interest thereon from August 1st, 1893, viz:

Casey Young	$1,000
L. B. McFarland	1,250
Holmes Cummins	1,000

Third. That the trust deed made about September 20, 1893, to complainants Gwynne & Morgan, trustees, is void upon its face, and is so adjudged; however, the court is of opinion that said deed was executed in good faith by all parties thereto, and the beneficiaries therein mentioned, so far as they may establish valid claims against the Appeal Company, will share in the distribution of the fund in court as general creditors.

Fourth. It is adjudged that W. F. Taylor have and recover judgment of J. B. Loring for $6,500, the amount which he has paid as endorser for W. A. Collier on his note, and for which he held an interest in the said $200,000 of which bonds or a portion of the same; but said Taylor will not be allowed any interest on said claim, the court al-

lowing him only the face of his claim, or the amount actually paid out by him as such endorser.

This judgment in favor of Taylor, is made a charge and lien upon the Appeal building above described in this decree.

Fifth. W. A. Collier and Alice T. Collier are entitled to recover from the Appeal Company and to be paid out of the fund in court as general creditors, whatever rents or rental value may be
65 due them by the Appeal Company for its occupancy or possession of said Appeal building after June 7th, 1892, the court holding the deed of that date from Collier and wife to the Appeal Company to be void, and that said company is liable for all rents collected or realized by it whilst in possession under said deed.

The court further adjudges and decrees that the receiver is liable to the said Collier and wife for the reasonable rental value of the portion of said building occupied by him, the court finding and adjudging that said Collier and wife have failed to establish any contract liability on the part of the receiver.

The purchaser, W. J. Crawford, having assumed this liability of the receiver, said Collier and wife will be awarded judgment against him therefor, as and when established, but this right of judgment against him shall not affect this right, which right is here adjudged to be paid out of the fund in court, if necessary to this interest.

The said liability of the receiver for rent is subject to any proper and legal offsets or count-claims which said receiver or said Crawford may establish.

Sixth. The decree of the court below in respect to the notes held by the Security Bank of Memphis and Memphis City bank is affirmed except so far as W. A. Collier and his assignee, Joseph Haines are by the decree below denied the right to be subrogated to the rights of the Security bank in respect to the $5,000.00 deposited with said bank by W. A. Collier said Security bank will — *pro rata* in the general fund herein upon the basis of its full debt of $12,500.00 with interest and attorneys' fees without accounting for said $5,000.00 collected, until its full debt is paid.

In the event the *pro rata* so received does not pay its debt in full the said $5,000.00 is to be used in making up the deficiency, and
66 the balance of the said $5,000.00 not so necessarily used in making up of such deficiency aforesaid, is decreed to Joseph Haines, assignee of W. A. Collier for which the Security Bank of Memphis will account to said Haines.

Seventh. As to the question of the attorneys' fees, to the solicitor filing the general creditors' bill, it is adjudged that the bill was well filed, and that the amount that would be proper to be paid to the attorneys representing said bill will be determined upon the reference to be had in the court below, and a lien is hereby declared in favor of Walter Malone, said solicitor on the fund in the court, in this cause for such services.

Eighth. The court adjudges that the indebtedness incurred for the purchase of the properties of the Avalanche Company is the indebtedness of the Memphis Appeal Company, and it will be so treated upon the reference.

Ninth. The decree of the chancery court is affirmed except, as it is hereby reversed or modified, and the cause is remanded to the chancery court to be proceeded with in accordance with this decree and the opinion of the court herein pronounced.

The court makes no adjudication whatever as to any of the creditors against the Memphis Appeal Co., except as aforesaid, in respect to the holders of the obligations, or renewals thereof, executed under the purchase of the Avalanche properties and leaves all such to be established under the reference as herein authorized and directed.

The costs of the court below will be paid as ordered by the chancellor; and the costs of this court will be paid out of the fund in court."

And the decree of the supreme court is thereupon made the decree of this court, a reference is hereby ordered to the clerk and
67 master in obedience to said decree to ascertain and report with promptness what, from the proof to be taken by him, would be a reasonable fee for legal services performed by Walter Malone, counsel for general creditors in these causes.

The clerk and master will also upon the proof taken and to be taken, report to the next term of this court the various creditors of the Memphis Appeal Co., and the amount of all their respective claims.

The clerk and master will, however, take proof as to the fees of complainant's counsel, and report thereon as soon as proof thereon is completed, and upon all matters of reference contained in said decree of the supreme court, the clerk and master will report to the next term of the court.

WILLIAM D. BEARD, *Chancellor.*

It is agreed that the interest at six per cent. per annum on plaintiff's claim of $3,902.74, calculated to March 21, 1899, amounts to $1,064.58, making plaintiff's total claim $4,967.32.

Both parties rest.

Defendant asks for a dismissal of the complaint.

Motion denied; defendant excepts.

Mr. OTIS: I ask the court to direct a verdict in favor of the plaintiff for $4,967.32.

Motion granted; defendant excepts.

Mr. PORTER: I ask that the court direct a verdict in favor of the defendant.

Motion denied; defendant excepts.

68 Thereupon the jury, under the direction of the court, rendered a verdict in favor of the plaintiff for $4,967.32, to which defendant duly excepted.

On motion of plaintiff's counsel an extra allowance of 5 % is granted to the plaintiff. On motion of defendant's counsel a stay of execution is granted for thirty days after notice of entry of judgment and sixty days granted defendant, in which to make and serve a case on appeal.

The foregoing case contains all the evidence taken on the trial of this action.

Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
against
SAMUEL C. BECKWITH, Defendant.

CITY OF NEW YORK, }
County of New York, } *ss:*

Thomas Kilvert, being duly sworn, says: I am a member of the firm of Porter & Kilvert, the attorneys for the defendant herein. No opinion was delivered by Mr. Justice Bischoff upon the trial of this action in the court below.

THOS. KILVERT.

Sworn to before me this 7th day of April, 1899.

JOHN B. PANNES,
Notary Public, N. Y. County.

69 Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant. } Notice of Appeal.

Please take notice that the defendant appeals to the appellate division of the supreme court of the State of New York for the first department from the judgment entered in this action on the 24th day of March, 1899, in the office of the clerk of the county of New York, in favor of plaintiff and against the defendant for the sum of $5,665.14 and from each and every part thereof.

Dated New York, April 6, 1899.

PORTER & KILVERT,
Attorneys for Defendant, Appellant.

Office and post-office address, 154 Nassau street, New York.

To William Sohmer, Esq., clerk of the county of New York; Otis & Pressinger, Esqs., attorneys for plaintiff-respondent.

70 It is hereby consented that the within case and exceptions upon appeal be settled and ordered on file as printed.

N. Y., April 14th, 1899.

PORTER & KILVERT,
Appellant's Attorneys.
OTIS & PRESSINGER,
Respondent's Attorneys.

Within case is hereby settled as printed and ordered on file.

Dated New York, April 14, 1899.

HENRY BISCHOFF, JR., *J. S. C.*

It is stipulated that the foregoing are true copies of the original case and other papers required to be printed by rule 41, and certification thereof pursuant to the provisions of section 1353 of the Code of Civil Procedure or otherwise is hereby waived.

Dated New York, April 14, 1899.

OTIS & PRESSINGER,
Attorneys for Plaintiff.
PORTER & KILVERT,
Attorneys for Defendant.

71 It is stipulated that the foregoing are true copies of the original case, judgment notice of appeal and other papers required to be printed by rule 41, and certification thereof pursuant to the provisions of section 1353 of the Code of Civil Procedure or otherwise is hereby waived.

Dated New York, April 17, 1899.

OTIS & PRESSINGER,
Attorneys for Plaintiff, Respondent.
PORTER & KILVERT,
Attorneys for Defendant, Appellant.

72 *Order of Affirmance.*

At a term of the appellate division of the supreme court of the State of New York for the first department, held at the court-house thereof in the county of New York on the 23d day of June, 1899.

Present: Hon. Charles H. Van Brunt, P. J.
Hon. William Rumsey, J.
Hon. Morgan J. O'Brien, J.
Hon. George L. Ingraham, J.
Hon. Chester B. McLaughlin, J.

COMMERCIAL PUBLISHING COMPANY, Plaintiff and Respondent,
against
SAMUEL C. BECKWITH, Defendant and Appellant.

The appeal by the defendant from the judgment for $5,665.14 entered herein on the 24th day of March, 1899, in favor of the plaintiff and against the defendant, having been called for argument in its regular order on the calendar of this court, and after hearing Anthony B. Porter, Esq., of counsel for appellant, in support of said appeal, and A. Walker Otis, of counsel for respondent, in opposition thereto, it is on motion of Otis & Pressinger, the attorneys for the plaintiff,

Ordered that said judgment be and the same is hereby affirmed with costs and disbursements.

Enter.

C. H. V. B.

73 *Judgment, July* 10, 1899.

Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff,
vs.
SAMUEL C. BECKWITH, Defendant.

A judgment for $5,665.14 having been entered herein on the 24th day of March, 1899, in favor of the plaintiff and against the defendant, and the defendant having appealed therefrom to the appellate division of this court for the first department, and said appellate division by an order bearing date June 23, 1899, and filed in the office of the clerk of said appellate division on July 3, 1899, having affirmed said judgment with costs and disbursements, and the remittitur from said appellate division having been filed in the office of the clerk of the county of New York on the 5th day of July, 1899, and the costs of the plaintiff having been duly taxed on notice at the sum of one hundred and three and $\frac{90}{100}$ dollars, it is, on motion of Otis & Pressinger, the attorneys for the plaintiff.

Adjudged that said judgment of March 24, 1899, be and the same is hereby affirmed and that the plaintiff recover of the defendant the sum of one hundred and three and $\frac{90}{100}$ dollars its costs as aforesaid, and that the plaintiff have execution therefor.

[L. S.] WM. SOHMER, *Clerk.*

74 Supreme Court, Appellate Division, First Department.

COMMERCIAL PUBLISHING COMPANY, Plaintiff and Respondent,
against
SAMUEL C. BECKWITH, Defendant and Appellant.

CITY OF NEW YORK,
County of New York, } ss:

Thomas Kilvert, being duly sworn, says I am a member of the firm of Porter & Kilvert, the attorneys for the defendant appellant herein. No opinion was delivered by the judges of the appellate division upon the argument of the appeal before that court.

THOS. KILVERT.

Sworn to before me this 19th day of July, 1899.

EUGENE NEWMAN,
Commissioner of Deeds, City of New York,
Residing in New York County.

75 Court of Appeals, State of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff and Respondent,
against
SAMUEL C. BECKWITH, Defendant and Appellant.

Please take notice that the appellant Samuel C. Beckwith appeals to the court of appeals of the State of New York from the judgment in this action entered July 10th, 1899, in the office of the clerk of the county of New York upon the order of the appellate division of the supreme court for the first department dated June 23d, 1899, for the sum of one hundred and three and $\frac{99}{100}$ dollars costs of appeal and also affirming the judgment for $5,655.14, entered in this action March 24, 1899, in favor of the plaintiff against the defendant and that the appellant intends to bring up for review upon such appeal the said order; and the defendant appellant hereby stipulates and agrees if such judgment be affirmed, judgment absolute shall be rendered against him in favor of the plaintiff respondent.

Dated New York, July 18th, 1899.

Yours &c.,
PORTER & KILVERT,
Defendant's and Appellant's Attorneys,
Tribune Building, New York.

Messrs. Otis & Pressinger, attorneys for plaintiff and respondent, 111 Broadway, New York city and William Sohmer, Esq., clerk of the county of New York.

76 Pursuant to section 3301 of the Code of Civil Procedure it is hereby stipulated by and between the attorneys for the respective parties to this appeal that the foregoing is a true and correct copy of the judgment-roll, and of the case and exceptions, and the judgment given thereon, and of the notice of appeal and of all other papers required to be transmitted to the court of appeals by the clerk of the county of New York upon whom the notice of appeal herein to said court of appeals was served, and certification of such papers by the said clerk is hereby waived.

Dated N. Y., July 19, 1899.

OTIS & PRESSINGER,
Plaintiff and Respondent's Attorneys.
PORTER & KILVERT,
Defendant and Appellant's Attorneys.

77 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 4th day of June, in the year of our Lord one thousand nine hundred and one, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, June 5, 1901.

COMMERCIAL PUBLISHING COMPANY, Respondent,
ag'st
SAMUEL C. BECKWITH, Appellant.

Be it remembered that on the 22nd day of July, in the year of our Lord one thousand eight hundred and ninety-nine, Samuel C. Beckwith the appellant in this action came here into the court of appeals by Porter & Kilvert, his attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the appellate division of the supreme court in and for the first judicial department, and Commercial Publishing Company, the respondent in said action, afterwards appeared in said court of appeals by Otis & Pressinger its attorneys, which said notice of appeal and return thereto filed as aforesaid are hereunto annexed.

Whereupon the said court of appeals having heard this cause argued by Mr. A. B. Porter of counsel for the appellant and by Mr. A. Walker Otis of counsel for the respondent, and after due deliberation had thereon did order and adjudge that the judgment of the appellate division of the supreme court appealed from herein be and the same hereby is reversed and the complaint dismissed with costs.

78 And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be and the same hereby is reversed, &c., &c., as aforesaid, and hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York before the justices thereof according to the form of the statute in such case made and provided to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

R. M. BARBER,
Dep. Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *June 5th*, 1901.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals with the papers originally filed therein attached thereto.

[SEAL.] R. M. BARBER,
Dep. Clerk.

Endorsed: "Filed June 10, 1901."

79 At a special term part one of the supreme court New York county held at the court-house in the city of New York on the 20th day of June, 1901.

Present: Hon. Henry Bischoff, Jr., justice.

COMMERCIAL PUBLISHING COMPANY
against
SAMUEL C. BECKWITH.

The defendant having duly appealed to the court of appeals of the State of New York from the judgment in this action entered July 10th, 1899 in the office of the clerk of the county of New York upon the order of the appellate division of the supreme court for the first department dated June 23rd, 1899 for the sum of $103.90 costs of appeal and also affirming the judgment for $5,655.14 entered in this action March 24th, 1899 in favor of the plaintiff against the defendant and said appeal having been duly heard and determined, in favor of defendant, and the remittitur thereon having been filed in the office of the clerk of the county of New York on the 10th day of June, 1901.

Now on reading the said remittitur from the said court of appeals and proof of service on plaintiff's attorneys of notice of such filing and of application for this order and on motion of Porter & Kilvert attorneys for the defendant appellant and no one opposing on the part of the plaintiff it is

Ordered that the said judgment of the court of appeals be duly made the judgment of this court and that the defendant's costs be duly taxed by the clerk of this court and duly inserted in the judgment to be entered under and pursuant to this order.

Enter,

H. B., JR., *J. S. C.*

Endorsed: "Filed June 20, 1901."

80 Supreme Court, New York County.

COMMERCIAL PUBLISHING COMPANY
against
SAMUEL C. BECKWITH.

The defendant having duly appealed to the court of appeals of the State of New York from the judgment in this action entered July 10th, 1899 in the office of the clerk of the county of New York upon the order of the appellate division of the supreme court for the first department dated June 23rd, 1899 for the sum of $103.90 costs of appeal and also affirming the judgment for $5,655.14 entered in this action March 24th 1899 in favor of the plaintiff against the defendant and said appeal having been duly heard and determined in favor of defendant rendering final judgment in his favor reversing said judgment so appealed from and dismissing the complaint with costs and the remittitur thereon having been filed in the office of the clerk of the county of New York on the 10th day of June, 1901, and an order having been made the 20th day of June, 1901

directing the making the judgment of the court of appeals the judgment of this court,

It is adjudged, that the judgment of the court of appeals be and the same is hereby made the judgment of this court and that Samuel C. Beckwith the defendant recover of The Commercial Publishing Company plaintiff $849.60 costs and disbursements duly taxed by the clerk of this court on June 21st, 1901, and that he have execution therefor.

Dated N. Y., June 21st, 1901.

[SEAL.]

WM. SOHMER, *Clerk.*
M. J. D.

Endorsed: " Filed June 21, 1901."

647.

STATE OF NEW YORK, *County of New York*, } ss:

I, William Sohmer, clerk of the said county, and clerk of the supreme court of said State for said county, do certify, that I have compared the preceding with the original record, Commercial Publishing Company *vs.* Samuel C. Beckwith, on file in my office, and that the same is a correct transcript therefrom, and the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 3rd day of July, 1901.

[Seal of New York.]

WM. SOHMER, *Clerk.*

81 Supreme Court, County of New York.

COMMERCIAL PUBLISHING COMPANY, Plaintiff in Error, *vs.* SAMUEL C. BECKWITH, Defendant in Error. } Petition for Writ of Error.

To the Hon. Rufus W. Peckham, associate justice of the Supreme Court of the United States:

The petition of Commercial Publishing Company the plaintiff in error herein respectfully shows:

I.

That The Commercial Publishing Company, the plaintiff in error herein is a foreign corporation duly organized and existing under the laws of the State of Tennessee and engaged in the publication at Memphis, in said State, of a newspaper known as the Commercial Appeal.

That the defendant in error is a resident of the city, county and State of New York.

II.

That prior to the 30th day of September, 1893, the Memphis Appeal Company, a corporation organized under the laws of the State of Tennessee was engaged in the publication at said city of Memphis, of a newspaper known as the Memphis Appeal-Avalanche.

That on or about September 30, 1893, one Andrew D. Gwynne and others began an action in the chancery court of Shelby
82 county, Tennessee against said Memphis Appeal Company and others, to which action the defendant in error herein was a party. That on the 30th day of September, 1893, a decree was entered in said action appointing one William J. Chase receiver of certain property and assets of said Memphis Appeal Company.

III.

That said receiver qualified under said decree of September 30, 1893 on the same day, and at once took possession of the property mentioned in said decree and continued the publication of said Memphis Appeal-Avalanche from the 30th day of September, 1893 to the 16th day of June, 1894, and was still acting as such receiver on March 26, 1896.

IV.

That between September 30, 1893 and June 16, 1894 said receiver published in said newspaper certain advertisements for account of various parties, the value of which advertisements amounted to the sum of $3,902.74.

That on or about the 5th day of October 1893, a petition for removal to the circuit court of the United States for the western division of the western district of Tennessee was filed in said action of Andrew D. Gwynne *et al. vs.* The Memphis Appeal Company *et al.* by said Samuel C. Beckwith, the defendant in error herein, on the ground that a separable controversy existed between the complainants therein and said Samuel C. Beckwith, and thereupon said chancery court of Shelby county, Tennessee and said circuit court of the United States for the western division of the western district of Tennessee acquired and exercised concurrent jurisdiction of said cause.

83 V.

That between the 5th day of October 1893, and the 6th day of April 1894, a controversy arose between Samuel C. Beckwith, the defendant in error herein, and said William J. Chase, as such receiver, touching the ownership of the moneys due to said receiver for the publication of said advertisements by said receiver as aforesaid, said Samuel C. Beckwith claiming the right to collect said moneys because of a contract made between said Samuel C. Beckwith and the Memphis Appeal Company on January 3, 1891, while said receiver claimed the right to collect said moneys because of the fact that they accrued for advertisements published by him as such receiver under the order of the court by which he was appointed.

VI.

That thereafter and during the month of April 1894 decrees were simultaneously entered in said action thus pending in the chancery court of Shelby county, Tennessee, and in said action then pending in the circuit court of the United States for the western division of the western district of Tennessee, appointing E. B. McHenry, who was the clerk and master of said chancery court and J. B. Clough, who was the clerk of said circuit court of the United States, special commissioners to sell at public auction said The Memphis Appeal-Avalanche newspaper with all the rights, privileges, benefits, franchises, &c., belonging to or in any way pertaining to the same, together with its good will, subscription list, advertising patronage, income and profits, and all the machinery, appliances, furniture, material, property, assets, &c. of every kind and description,
84 and the general outfit of the newspaper then in the hands of the receiver in said causes.

That in order to sell the accounts due said receiver for said advertisements so published by him during his administration as aforesaid, and to make same bring their value, said decrees of sale contained the following provision relative to the sale of said accounts:

"All accounts which may be or to become due to the receiver by reason of the operation of the newspaper in his hands, will pass to and be acquired by the purchaser at this sale who will become the full owner of the same. * * * The purchaser at the sale herein ordered will acquire the absolute title to all the property decreed to be sold, free from all claims, liens, and encumbrances whatever, save as provided above as to the contract obligations of the receiver; and the proceeds of sale will stand in these causes in lieu and place of the property itself."

VII.

That on the 16th day of June 1894, said commissioners acting under the decrees aforesaid, sold at public auction in the city of Memphis the property aforesaid, when and where same was struck off to one West J. Crawford, he paying therefor to said E. B. McHenry and J. B. Clough as such commissioners, the sum of $65,200.00, and he being the highest, best and last bidder therefor.

VIII.

That on the 3rd day of July, 1894, a decree was entered in said action of Andrew D. Gwynne *et al.* against The Memphis Appeal Company *et al.* thus pending in the chancery court of Shelby county, Tennessee, confirming said sale of June 16, 1894. That on the 3rd day of July, 1894, a decree was also entered in said action of Andrew D. Gwynne *et al. vs.* The Memphis Appeal Company *et al.*
85 thus pending in the circuit court of the United States for the western division of the western district of Tennessee confirming said sale of June 16, 1894.

IX.

That at the time of the making of said various decrees as aforesaid said chancery court of Shelby county, Tennessee and said circuit court of the United States for the western division of the western district of Tennessee had jurisdiction of the subject-matter of said actions and of the parties thereto, including said William J. Chase as such receiver, and said Samuel C. Beckwith the defendant in error herein.

X.

That prior to the 28th day of February, 1896, the defendant in error collected from the various parties for whom said advertisements were published by said receiver as aforesaid, the sum of $3,902.74, being the value and price of said advertisements as above stated, said various sums having been paid by said various parties to the defendant in error in consideration of the publication by said receiver of said advertisements for their account in said Memphis Appeal-Avalanche between September 30, 1893 and June 16, 1894 while said receiver was publishing said newspaper as aforesaid.

XI.

That prior to the 28th day of February, 1896, said West J. Crawford duly assigned and transferred to the plaintiff in error all his claims, demands and rights of action against defendant in error which he, the said West J. Crawford acquired by virtue of
86 said sale of June 16, 1894 above referred to.

XII.

That prior to the 28th day of February, 1896, the plaintiff in error demanded from the defendant in error the moneys so collected, but said defendant in error has failed, omitted and refused to pay to the plaintiff in error said sums of money or any part thereof, he claiming to hold the same by virtue of said contract of January 3, 1891.

XIII.

That on the 28th day of February 1896, the plaintiff in error brought this action against the defendant in error in the supreme court of the State of New York for the county of New York to recover said sum of $3,902.74 with interest thereon from the 1st day of January 1894.

XIV.

That thereafter issue was joined in said action by the service by the defendant therein of an answer and supplemental answer.

That said action came on for trial at a trial term of the supreme court of the State of New York for the county of New York on the 21st day of March 1899 before the Hon. Henry Bischoff, Jr. and a jury, upon an agreed statement of facts, whereupon the plaintiff in error having proved among other things the facts above set forth, the court directed a verdict in favor of the plaintiff in error and

against the defendant in error for the sum of $4,967.32. That on the 24th day of March, 1899 a judgment in favor of plaintiff in error for $5,665.14 was duly entered on said verdict in the office of the clerk of the county of New York.

87 That thereafter the defendant in error prosecuted an appeal from said judgment of March 24, 1899 to the appellate division of said supreme court for the first judicial department thereof, and on the 23rd day of June, 1899 an order was duly made in said appellate division affirming said judgment of March 24, 1899 with costs. That on the 10th day of July, 1899 a judgment in favor of plaintiff in error was duly entered in the office of the clerk of the county of New York on said order of the appellate division affirming said judgment of March 24, 1899, with $103.90 costs to the plaintiff in error.

That thereafter the defendant in error appealed from said judgment of July 10, 1899 to the court of appeals of the State of New York, which is the highest court of the State of New York in which a decision in said suit could be had. That in said action your petitioner claimed that defendant in error was bound by the records and judicial proceedings in the chancery court of Shelby county, Tennessee, and the circuit court of the United States for the western division of the western district of Tennessee, thus introduced in evidence by your petitioner for the reason that defendant in error was a party to said proceedings, and that therefore defendant in error could not question the title acquired by said West J. Crawford at said sale of June 16, 1894 as aforesaid.

That thereafter and on the 4th day of June, 1901, a decision was rendered by said court of appeals reversing said judgment of July 10, 1899 and dismissing the complaint in said action with costs. That the judgment of said court of appeals was against each and all of the rights so claimed by your petitioner in said action as aforesaid in that said court of appeals held that said West J. Crawford did not acquire at said sale of June 16, 1894, any title to the accounts sold at said sale and sued for in this action, and by said decision said court of appeals refused to give to said records and judicial proceedings of said chancery court of Shelby county, Tennessee, and said circuit court of the United States for the western division of the western district of Tennessee, such faith and credit as they have by law or usage in the courts of the State from which they were taken, and thereby your petitioner was denied the rights conferred upon it in that regard by the Constitution and laws of the United States.

88

That thereafter and on the 10th day of June 1901, the remittitur from said court of appeals was duly filed in the office of the clerk of the county of New York.

That thereafter and on the 20th day of June 1901, an order was entered in said action in the supreme court of the State of New York for the county of New York, making the judgment of said court of appeals the judgment of said supreme court.

That thereafter and on the 21st day of June, 1901, a judgment in favor of defendant in error was duly entered in said action in the

supreme court for the county of New York, making the judgment of said court of appeals the judgment of said supreme court for the county of New York and dismissing the complaint, and awarding to the defendant in error the sum of $849.60 costs and disbursements, and directing that the defendant in error have execution therefor.

89 Wherefore forasmuch as your petitioner believes there was manifest error in said judgment of said court of appeals and in said judgment of the supreme court of the State of New York, entered on the remittitur from said court of appeals, which said judgments were against the several claims of your petitioner as hereinbefore set forth and in the final judgment in said action, which is to the great damage of your petitioner, your petitioner prays that your honor upon an examination of said record will grant to your petitioner a writ of error to the end that said judgment and record may be brought before the Supreme Court of the United States for review pursuant to the laws of the United States and the practice of the Supreme Court of the United States.

Dated New York, July 3, 1901.

OTIS & PRESSINGER,
Attorneys for Petitioner, 111 *Broadway*,
Borough of Manhattan, New York City.

90 [Endorsed:] New York supreme court county of New York. Commercial Publishing Company plaintiff against Samuel C. Beckwith defendant. Original. Petition for writ of error. Otis & Pressinger, attorneys for petitioner, 111 Broadway, borough of Manhattan, New York city. Filed July 11, 1901. Service of a copy of within petition is hereby admitted. Dated, N. Y., July 11th 1901. Porter & Kilvert att'ys for def't in error.

91 Supreme Court of the United States.

COMMERCIAL PUBLISHING COMPANY, Plaintiff in Error,
vs.
SAMUEL C. BECKWITH, Defendant in Error.
} Assignment of Errors.

Now comes the above-named plaintiff in error by Otis & Pressinger its attorneys and says that in the record of proceedings in the above-entitled action there is manifest error in this, to wit:

I.

The supreme court of the State of New York, under the direction of the court of appeals of said State, erred in deciding that the decree of sale made by the circuit court of the United States for the western division of the western district of Tennessee on the 6th day of April, 1894, and the decree amending said last-mentioned decree made in said circuit court of the United States for the western division of the western district of Tennessee on the 30th day of April, 1894, and the decree made in said circuit court of the United States for the

western division of the western district of Tennessee on the 3rd day of July, 1894, confirming the sale made under said decrees of April 6, 1894 and April 30, 1894, were not binding on the defendant in error herein, he being a party to the action in which said decrees were rendered, and in deciding that West J. Crawford, the purchaser at said sale did not acquire by virtue thereof as against the defendant in error, a good and valid title to the claims for advertising sold at said sale and sued for herein, amounting to
92 $3,902.74, and thereby there was drawn in question in said court of appeals and in said supreme court of the State of New York, a title claimed by plaintiff in error under an authority exercised under the United States, and the decision was against the title specially set up or claimed by the plaintiff in error under said authority.

II.

The supreme court of the State of New York under the direction of the court of appeals of said State, erred in deciding that the decree of sale made by the chancery court of Shelby county, Tennessee, on the 6th day of April, 1894, and the decree amending said last-mentioned decree made in said chancery court of Shelby county, Tennessee on the 30th day of April, 1894, and the decree made in said chancery court of Shelby county, Tennessee on the 3rd day of July, 1894, confirming the sale made under said decrees of April 6, 1894 and April 30, 1894, were not binding on the defendant in error herein, he being a party to the action in which said decrees were rendered, and in deciding that West J. Crawford, the purchaser at such sale did not acquire by virtue thereof as against the defendant in error, a good and valid title to the claims for advertising sold at said sale and sued for herein, amounting to $3,902.74, and thereby there was drawn in question in said court of appeals and in said supreme court of the State of New York a title, right, privilege or immunity claimed by the plaintiff in error under the Constitution and laws of the United States, and the decision was against the title, right, privilege or immunity specially set up or claimed by the plaintiff in error, in that the court of appeals and the supreme court of the State of New York in deciding as aforesaid, refused to
93 give to the records and proceedings of the chancery court of Shelby county, Tennessee and of the circuit court of the United States for the western division of the western district of Tennessee such faith and credit as they have by law or usage in the courts of the State from which they were taken, and thereby plaintiff in error was denied the rights conferred upon it in that regard by the Constitution and laws of the United States.

III.

The supreme court of the State of New York under the direction of the court of appeals of said State, erred in deciding that said West J. Crawford did not as against defendant in error acquire at said sale of June 16, 1894 any title to the accounts sued for herein for that defendant in error and William J. Chase the receiver appointed

in said proceedings in the courts of Tennessee were both parties to the actions above referred to, and the court having jurisdiction of these two parties who were rival claimants to the accounts in question, the court in order to make said accounts bring their full value, made a decree of sale providing that said accounts should be sold free and clear of the claims of the rival claimants and that the proceeds should stand in lieu and place of the property so sold. That said sale was had accordingly, when said accounts were purchased by West J. Crawford the assignor of plaintiff in error, and said sale was duly confirmed by the court, therefore said court of appeals should have held that defendant in error was bound by said proceedings and said sale and that there having been conferred upon him in said proceedings the right to contend for the purchase-money, he could not attack the title of the purchaser, and

94 said court of appeals and said supreme court of the State of New York in obedience to the remittitur of the court of appeals having held that said West J. Crawford did not acquire title to said accounts at said sale as against the defendant in error, said court of appeals and said supreme court of the State of New York thereby refused to give to said records and judicial proceedings of the chancery court of Shelby county, Tennessee and of the circuit court of the United States for the western division of the western district of Tennessee, such faith and credit as they have by law or usage in the courts of the State from which they were taken, and thereby there was drawn in question in said court of appeals and in said supreme court of the State of New York, a title, right, privilege or immunity claimed by the plaintiff in error under the Constitution and laws of the United States and the decision was against the title, right, privilege or immunity specially set up or claimed by plaintiff in error and thereby plaintiff in error was denied the rights conferred upon it in that regard by the Constitution and laws of the United States.

Wherefore plaintiff in error prays that the judgment entered as aforesaid on the 21st day of June, 1901 may be reversed, and the judgments entered as aforesaid on the 24th day of March, 1899 and the 10th day of July, 1899 may be affirmed and that plaintiff in error may recover of defendant in error the costs of this court and of the court of appeals of the State of New York.

Dated New York, July 3, 1901.

OTIS & PRESSINGER,
Attorneys for Plaintiff in Error, 111 Broadway,
Borough of Manhattan, New York City.

95 [Endorsed:] E. & A. Supreme Court of the United States. Commercial Publishing Company plaintiff against Samuel C. Beckwith defendant Original. Assignment of errors. Otis & Pressinger, attorneys for plaintiff in error 111 Broadway, borough of Manhattan, New York city. Filed July 11 1901 Service of a copy of within assignment of errors is hereby admitted. Dated, N. Y., July 11th 1901 Porter & Kilvert att'ys for def't in error

96 Supreme Court of the State of New York, County of New York.

COMMERCIAL PUBLISHING COMPANY, Pl'ff in Error, *vs.* SAMUEL C. BECKWITH, Def't in Error. } Bond for Damages and Costs.

Know all men by these presents, that we, A. Frank Richardson of No. 109 West 74th street in the city county and State of New York and Henry Webb of Hotel Bartholdi corner Broadway and 23rd street in said city county and State are held and firmly bound unto the above-named Samuel C. Beckwith in the sum of sixteen hundred & ninety-nine & $\frac{20}{100}$ dollars, to be paid to the said Samuel C. Beckwith for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of July in the year of our Lord one thousand nine hundred and one.

Whereas, the above-named Commercial Publishing Company has prosecuted a writ of error to the supreme court of the State of New York for the county of New York returnable in the Supreme Court of the United States on the fifth day of August 1901 to reverse the judgment rendered in the above-entitled suit, on the 21st day of June 1901 which reversed a judgment for 5,655.14 entered in favor of plaintiff in error on March 24 1899 and also a judgment for 103.90 entered in favor of plaintiff in error on June 23 1899 and awarding 849.60 costs to defendant in error.

Now therefore, the condition of this obligation is such, that if the above-named Commercial Publishing Company shall prosecute said writ of error to effect and answer all damages and costs, if it shall fail to make said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

A. FRANK RICHARDSON. [L. S.]
HENRY WEBB. [L. S.]

Sealed and delivered, and taken and acknowledged, this 3rd day of July 1901 before me,

F. H. DENMAN,
[L. S.] *Notary Public, Westchester County.*

Certificate filed in New York county.

97 STATE OF NEW YORK, } ss:
County of New York, }

A. Frank Richardson and Henry Webb being duly sworn, do depose and say and each for himself says that they are worth the sum of thirty-three hundred and ninety-eight & $\frac{40}{100}$ dollars, over and above all their just debts and liabilities.

A. FRANK RICHARDSON.
HENRY WEBB.

Sworn to this 3rd day of July A. D. 1901, before me.

F. H. DENMAN,

[L. S.] *Notary Public, Westchester County.*

Certificate filed in New York county.

[Endorsed:] Supreme court county of New York Commercial Publishing Company pl'ff in error *vs.* Samuel C. Beckwith def't in error Copy. Bond for damages and costs on writ of error Otis & Pressinger, att'ys for pl'ff in error 111 Broadway borough of Manhattan, New York city Filed July 11, 1901 I approve the within bond as to form and sufficiency of sureties Dated July 6th 1901. R. W. Peckham. M. J. D.

98 By the Honorable Rufus W. Peckham, one of the justices of the Supreme Court of the United States, to Samuel C. Beckwith, Greeting:

You are hereby cited and admonished to be and appear before a Supreme Court of the United States to be holden at Washington on the fifth day of August 1901, pursuant to a writ of error filed in the clerk's office of the supreme court for the county of New York, wherein Commercial Publishing Company is plaintiff in error and you are defendant in error to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand in the State of New York, in the circuit above named, this 6th day of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of these United States the one hundred and twenty-sixth.

R. W. PECKHAM,

Jus. Sup. Ct. U. S.

99 [Endorsed:] Supreme Court of the United States. Commercial Publishing Company pl'ff in error *vs.* Samuel C. Beckwith def't in error Citation. Otis & Pressinger att'ys for pl'ff in error, 111 Broadway borough of Manhattan New York city Received July 11, 1901 Wm. Sohmer, cl'k Service of a copy of within citation is hereby admitted—Dated New York July 11, 1901 Porter & Kilvert att'ys for def't in error.

100 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of New York for the first judicial department, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being a judgment entered pursuant to a remittitur from the court of appeals of the State of New York same being the highest court of the said State in which a decision could be had in the said suit between Commercial Publishing Company

plaintiff and Samuel C. Beckwith defendant wherein is drawn in question a title claimed under an authority exercised under the United States and the decision is against said title, or where a title right privilege or immunity is claimed under the Constitution and laws of the United States and the decision is against the title right, privilege or immunity specially set up or claimed by either party under the Constitution and laws of the United States and wherein a manifest error hath happened to the great damage of the said Commercial Publishing Company as is said and appears by its complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the fifth day of August, 1901, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 6th day of July, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-sixth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
R. W. PECKHAM,
Jus. Sup. Ct. U. S.

[Endorsed:] Supreme Court of the United States. Commercial Publishing Company plaintiff in error, *vs.* Samuel C. Beckwith defendant in error. Writ of error. Otis & Pressinger attorneys for plaintiff in error, 111 Broadway borough of Manhattan New York city Received July 11, 1901 Wm. Sohmer clerk. Service of a copy of within writ of error is hereby admitted. Dated New York July 11, 1901 Porter & Kilvert att'ys for def't in error.

101 STATE OF NEW YORK, } *ss:*
County of New York, }

I, William Sohmer, clerk of the said county, and clerk of the supreme court of said State for said county, do certify, that by virtue of the annexed writ of error and in obedience thereto I have compared the preceding with the original papers hereto annexed on file in my

office, and that the same are correct transcripts therefrom, of the record and proceedings had in said court and the whole of such originals in the cause of Commercial Publishing Company *vs.* Samuel C. Beckwith.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 12th day of July 1901.

[Seal of New York.]

WM. SOHMER, *Clerk.*

Endorsed on cover: File No. 18,222. New York supreme court. Term No. 369. Commercial Publishing Company, plaintiff in error, *vs.* Samuel C. Beckwith. Filed July 13th, 1901.